2010
California Environmental Quality Act (CEQA)
Statute and Guidelines

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Overview of the Association of Environmental Professionals

AEP is a non-profit organization of professionals working to improve their skills as environmental and resource managers. Since its formation in 1974, AEP has grown to over 1,700 members: planners, environmental scientists, biologists, lawyers, noise specialists, transportation planners, paralegals, archeologists, geologists, engineers, visual analysts, and other professionals in numerous disciplines. There are nine regional AEP chapters covering the following regions:

- Channel Counties
- Inland Empire
- Los Angeles County
- Monterey Bay Area
- Orange County
- San Diego
- San Francisco Bay
- Superior California
- Central

AEP is dedicated to the enhancement, maintenance and protection of the natural and human environment, as well as the continued improvement of the environmental profession and its members.

AEP's Mission is to:

- Enhance, maintain and protect the quality of the natural and human environment.
- Encourage and carry out research and education, including regular meetings for the benefit of AEP members, the public and concerned professionals in all fields related to environmental planning and analysis.
- Improve public awareness and involvement in the environmental planning, analysis and review process.
- Improve communication and advance the state of the art among people who deal with the environmental planning, analysis and evaluation.

NAEP AFFILIATION

California AEP is affiliated with the National Association of Environmental Professionals and serves as the California Chapter for NAEP. California AEP members are not obligated to join NAEP but may do so to receive the additional benefits of NAEP. California AEP's affiliation with NAEP provides additional benefits to members of both organizations by fostering networking and educational opportunities between the two organizations. For additional information about NAEP, please visit www.naep.org.

AEP Membership Categories

Full (Individual) Membership

The $140.00 annual membership dues includes all of the many services, benefits and discounts of membership. Depending on your location, you will become a member of the local chapter nearest

you and will start to receive the newsletter for that Chapter, which will list AEP activities in your area. The AEP State Board also provides outlying area support through the Directors at Large, to keep members in touch with items of interest and to facilitate establishment of new Chapters.

Sponsor Membership

For annual dues of $220.00, Government or Corporate Sponsors are provided one Full Membership which can "float" within the sponsor company, special recognition at the annual State Conference, a 10 percent discount on advertising, and a highlighted listing in AEP's statewide magazine the *Environmental Monitor*. Each Chapter may provide additional recognition for Sponsor Members. The floating membership entitles one individual from the sponsor company to attend local chapter activities, regional workshops and the State Conference at the discounted member rate. NOTE: The company takes responsibility to notify the appropriate AEP officer regarding which employee will attend a given AEP activity on behalf of the company.

Student Membership

The $20.00 annual dues includes all of the individual membership services and eligibility for the annual AEP Student Awards Program. Student members must be currently enrolled in 12 units or more at an accredited school. The State Conference Committee typically offers students reduced registration rates to the State Conference. In addition, AEP is an excellent resource for internship opportunities and networking with environmental professionals while seeking employment opportunities. Contact the local chapter for more information on student benefits and activities.

AEP MEMBERSHIP BENEFITS AND SERVICES

Web Site

AEP's website is a great resource for members, providing information about upcoming events, pending legislation and membership information. AEP's website address is www.califaep.org.

Environmental Monitor

The *Environmental Monitor is a* quarterly statewide magazine with information on top leaders in the profession, articles of interest, job opportunities and summaries of state and local chapter activities. The magazine is recognized throughout the environmental planning profession as an important source of information.

Environmental Assessor

The *Environmental Assessor* is a pull-out of environmental legislative activities for your personal library. The *Environmental Assessor* includes information describing the latest environmental legislation working through the State Senate and Assembly, the status of such legislation, and the position of AEP on such legislation. It also provides an update from AEP's State Legislative Committee and its interaction with and recommendations to the State Legislature.

Local Chapter Activities

Local chapters are governed by the local members with guidance and assistance, as needed, from the State Board. The local chapters offer a wide range of services and activities, typically consisting of a regular newsletter, membership meetings featuring top environmental professionals discussing current environmental topics, and a chance to network with local environmental professionals from

diverse backgrounds and environmental fields. Some chapters engage in educational activities based upon topical environmental issues and trends.

Environmental Services Bulletin

The Environmental Services Bulletin announces statewide job opportunities. This service also allows for private consultants to bid on new project contracts.

Annual State Conference

California AEP holds an annual Conference at various locations throughout the state, providing members with an opportunity to hear leading speakers in the environmental field, improve their skills, network with people from around the state, and discuss major environmental issues with experts in the field.

Professional Practice Insurance Discounts

AEP members can receive a discount on general liability and professional liability insurance through AEP's partnership with Hilb Rogal & Hobbs PPIB.

Biannual CEQA Workshops

Annual CEQA workshops provide updates of existing and recently adopted CEQA laws and current court actions. AEP members receive a discount when attending the annual CEQA workshops at locations throughout the state. The format of the workshops has proven successful, providing both basic and advanced information.

Membership Certificate

A membership certificate, suitable for framing, is sent to each new AEP member.

Annual CEQA Handbook

AEP annually publishes a CEQA Handbook, including the up to date text of the Statute and Guidelines, an update of CEQA Legislation and Court Cases, and a comprehensive index. Members receive a free copy of the CEQA Handbook. Additional copies in hardcopy and electronic (CD) format are available.

Legislative Activities

AEP has an active Legislative Committee which closely tracks and responds to proposed CEQA legislation in order to influence the pending legislation in a positive and meaningful manner. Current summaries and analysis of the bills are published regularly in the *Environmental Assessor* and on AEP's website.

Regional Area Support

Regional area support ensures representation no matter where you live. Directors-at-Large and state-sponsored events provide service to all areas within California.

Professional Award Program

The Professional Award Program provides an excellent opportunity for professional recognition of outstanding achievements and document preparation. AEP offers an awards program, the results of which are presented at the State Conference.

Association of Environmental Professionals Continuing Education Credit

Members who attend AEP workshops and other events earn special credit. CEQA Workshop participants are able to count attendance toward continuing education credit requirements under AICP and MCLE.

Member Services

To contact the AEP Membership Hotline, call (760) 340-4499.

Special Committees

The AEP Board appoints special committees to address issues of concern to its membership. Committees include the Legislative Committee, the Mitigation Practices Working Group, and the Environmental Justice Working Group.

Professional Discounts

AEP is continuously negotiating professional discounts for AEP members to attend U.C. Extension courses and to obtain professional guidebooks of interest to members. The discounts vary depending on the event and/or the publisher.

Membership application forms are also available from your local AEP Chapter or at www.califaep.org.

New/Renewal Membership Application

www.califaep.org

Please mail this portion along with your check made payable to AEP: c/o Lynne C. Bynder, CMP, Meetings Xceptional, 40747 Baranda Court, Palm Desert, CA 92260
AEP can not invoice for new memberships. Questions: 760.340.4499, fax: 760.674.2479. An online application is also available at http://www.califaep.org/OnlineApplication

GENERAL INFORMATION

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☐ Check here to be OMITTED from the AEP Web Site Directory. Employment type: ☐ Non-Profit ☐ Private ☐ Public ☐ Other _____

☐ Check here to receive the *Environmental Monitor* in electronic form ONLY. As a new member, would you prefer a *CEQA Guidelines* ☐ Book or ☐ CD?

☐ Please send me a National Association of Environmental Professionals (NAEP) membership application.

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☐ 9. Endangered Species/Biology
☐ 10. Geology/Seismic
☐ 11. Cultural Resources
☐ 12. Growth Management/ Regional Planning
☐ 13. Environmental Law/Policy
☐ 14. Land Use/Site Planning
☐ 15. Geographic Information Systems
☐ 16. Environmental Justice
☐ 17. Environmental Engineering
☐ 18. Other _____

CHAPTER REGIONS & MEMBERSHIP

AEP Code of Ethics

1. Conduct myself and my work in a manner that will uphold the values, integrity, and respect of the profession.
2. Uphold the stated intent as well as the letter of environmental policies, laws, and regulations which are adopted by governmental bodies or agencies.
3. Not engage in, encourage, or condone dishonesty, fraud, deceit, discrimination, or misrepresentation in the solicitation, preparation, or use of work prepared by me or under my direction.
4. Fully disclose to my employers and my prospective clients any economic or ethical interests which could reasonably be interpreted as a conflict of interest by them or by other affected parties with regard to my professional work.
5. I will ensure a good faith effort at full disclosure, technical accuracy, sound methodology, clarity, and objectivity in the collection, analysis, interpretation, and presentation of environmental information by me or under my direction.
6. I will achieve and maintain the highest level of professional competency, for myself and require the same for those I supervise.

Signature acknowledges full understanding and acceptance of the AEP Code of Ethics and Professional Conduct Guidelines.

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Status	Please Check
New Member Application	☐
Renewal Membership	☐
Change of Address, Etc.	☐

Membership Category	Annual Dues	Please Check
Full AEP Member	$140.00	☐
AEP Sponsor Member	$220.00	☐
Government/Corporate Sponsors are provided one Full Membership which can "float" within the sponsor company.		
AEP Full Time Student Member	$ 20.00	☐
Please include current student schedule showing 12 units or more with application.		

NOTE: SEE FULL CATEGORY DESCRIPTIONS ON LINE AT califaep.org.

AEP Chapter Areas *(choose and check one chapter only)*

☐ 1. Channel Counties
☐ 2. Inland Empire
☐ 3. Los Angeles
☐ 4. Monterey Bay
☐ 5. Superior California
☐ 6. Orange County
☐ 7. San Diego
☐ 8. San Francisco Bay Area
☐ 9. Central

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Summary of Key 2009 CEQA Court Cases

By Terry Rivasplata of ICF Jones & Stokes

The following discussions of California court decisions are summaries of the main points of each case and are certainly no substitute for legal advice. For more detail and interpretation, please consult your legal counsel.

What is a Project?

***Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Association of Governments* (2009) 179 Cal.App.4th 113**

In 2008, the Association of Governments placed a transportation sales tax on the Countywide ballot without first preparing an EIR on the measure and its associated expenditure plan. Measure A was adopted by the voters in November 2008.

Sustainable Transportation Advocates brought suit alleging that the transportation sales tax expenditure plan identified specific projects that should have been analyzed in a CEQA document before the measure was placed on the ballot. The trial court dismissed its petition for a writ of mandate. The Court of Appeal affirmed that dismissal.

The Court examined the question of whether Measure A and its accompanying Investment Plan actually committed the Association of Governments to undertake the proposed projects. The Investment Plan identified the projects to be funded by Measure A by anticipated total cost, location, and a brief description. All of the projects funded by Measure A would be subject to CEQA analyses at such time as they are funded, and prior to full design and construction. A substantial portion of the funding for these projects would come from sources than the sales tax.

The Court considered the Supreme Court's Save Tara decision with regard to the detail of information known about the project, as well as the Association of Government's level of commitment to these projects. The Court found that approval of Measure A did not commit the Association of Governments to these projects, nor foreclose alternatives or mitigation measures that would otherwise be considered under CEQA review. The Investment Plan's description of each project lacked details and specifications such that it would allow "flexibility to meet mitigation measures set forth in a subsequent EIR." In addition, Measure A's provision allowing the Association of Governments to amend the Investment Plan, including deleting projects, indicated that it had not committed itself to any project. The fact that full funding of any of the projects was not a certainty, given the substantial amount of outside funding required, was also an indicator of a lesser commitment.

The Court distinguished this case from ballot measures held subject to CEQA under the *Friends of Sierra Madre* and *Fullerton Joint Union High School District* cases. Unlike those cases, Measure A did not commit the Association of Governments to a specific course of action.

> "Unlike City's actions in *Save Tara*, respondent's actions did not demonstrate that, as a practical matter, it had committed itself to the implementation of the transportation projects in the Investment Plan. Measure A does not qualify as a project within the meaning of CEQA because it is a mechanism for funding proposed projects that may be modified or not implemented depending upon a number of factors, including CEQA environmental review. (CEQA Guidelines § 15378, subd. (b)(4).) In approving Measure A, respondent was "performing its legislative duty to obtain financing for County transportation needs." (*Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Assn. of Governments*, *supra*, 167 Cal.App.4th at p. 1240.) In adopting the Investment Plan, respondent was merely complying with the statutory requirement that, prior to the call of an

> election to approve a local transportation sales and use tax, "[a] county transportation expenditure plan shall be prepared for the expenditure of the revenues expected to be derived from the tax imposed . . ." (Pub. Util. Code, § 180206, subd. (a).) Without such a plan, the electorate would lack sufficient information to intelligently vote on whether to impose a local transportation sales and use tax. Thus, the Investment Plan functioned as an informative document rather than a commitment by respondent to the projects specified in the plan. "

***Riverwatch v. Olivenhain Municipal Water District* (2009) 170 Cal.App. 4th 1186**

This case is one step along a long trail of litigation over a proposed landfill. In 1994, San Diego County voters approved Proposition C providing for a landfill at the Gregory Canyon site in the north county. In 2004, the County Department of Environmental Health approved the landfill project. Riverwatch sued over the availability of water to serve the landfill, alleging that the EIR for the project failed to adequately analyze the impacts of trucking water onto the site. The trial court held in their favor. The court's January 2006 judgment ordered the County to set aside its approval of the landfill and certification of the EIR.

In February 2006, the Olivenhain Municipal Water District (OMWD) approved an agreement with GCL, the landfill operator, to provide up to 244,000 gallons of recycled water per day to the landfill for a term of up to 60 years. The water would be delivered by approximately 89 daily truck trips. The agreement spelled out that GCL would be responsible for trucking the water to the landfill and certain new capital improvements that GCL was to make at the landfill to accommodate the water deliveries. The agreement also provided that GCL would be solely responsible for complying with all CEQA requirements for the receipt, use and transportation of water under the agreement. OMWD did not consider the EIR or any other environmental impacts of the agreement prior to its approval.

The County issued a notice of availability for its revised EIR on the landfill in July 2006. In August, Riverwatch brought suit against OMWD's approval of the water supply agreement alleging that CEQA should have been completed before OMWD entered into the agreement. The trial court decided in favor of OWMD.

The Court of Appeal reversed. The court noted that the decision to approve a project "is a nullity if based on an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA." Furthermore, a responsible agency is required to consider the environmental effects of the project shown in the EIR prepared by the lead agency before it may approve its portion of that project.

A key determination in this case was whether the activities proposed to be carried out under OWMD's agreement with GCL were part of the County landfill project within the meaning of CEQA. The Court determined that it was. The landfill EIR contained numerous references to the need for water to serve the landfill and that the source of that water will be OWMD. The EIR also discussed the need to truck the water to the landfill, as included in the agreement. OWMD's action in entering into the contract met the requirements of a "project" under CEQA. That project constituted part of the landfill project.

Further, OWMD is a responsible agency that will carry out or approve part of the proposed project. As such, it must consider the final EIR prepared for the project before it may approve its part of the project. OMWD and GCL argued that the conditions made part of the agreement, including giving GCL responsibility for CEQA compliance, avoided granting approval of the project for CEQA's purposes. The Court disagreed, citing the California Supreme Court's 2008 *Save Tara* decision. Here, OWMD had committed itself to a definite course of action, meeting the Save Tara test.

> "Although the Agreement contained a provision regarding CEQA responsibility, that provision did not, in any reasonable construction, provide that *OMWD* retained its complete

> discretion under CEQA (as a responsible agency) to consider a final EIR certified by DEH and thereafter approve or disapprove its part of the Landfill project pursuant to the Agreement or to require mitigation measures or alternatives to its part of the project."

Further:

> "The Agreement omits any reference to *OMWD's* duties, as a responsible agency regarding the Landfill project, to comply with CEQA (i.e., by considering the final EIR certified by DEH *before approving* and committing itself to the water delivery and construction activities provided for in the Agreement). Therefore, neither the February 17, 2006, approval of the Agreement by OMWD's board, nor OMWD's execution of the Agreement as of March 15, 2006, conditioned OMWD's performance of the Agreement on OMWD's subsequent exercise of its CEQA discretion to take other actions under CEQA after considering the final EIR certified by [the County]… OMWD's approval and signing of the Agreement *committed* OMWD to a *definite course of action* and did not condition OMWD's performance of the Agreement on its subsequent exercise of its CEQA discretion to take other actions after considering the final EIR certified by [the County]."

The Court noted that, contrary to its duty as a responsible agency under CEQA, there was nothing in the record showing that OMWD ever considered CEQA before entering into the agreement. Therefore, even if the agreement had contained a condition that would have retained OMWD's full discretion as a responsible agency under CEQA, OMWD still failed to meet its obligation to consider a final CEQA document before taking action.

The County was not an indispensible party to this lawsuit since the conflict was over OMWD's independent action. Riverwatch's failure to name the County as a party did not affect the adequacy of its suit.

When Can you Use an Exemption?

***Sunset Skyranch Pilots Assoc. v. County of Sacramento* (2009) 47 Cal.4th 902**

In this case, the California Supreme Court has decided that statutory CEQA exemption for actions to deny a project applies even when denial would result in physical changes to the environment.

The County of Sacramento denied the conditional use permit that would have allowed Sunset Skyranch, a small private airport, to remain in operation. It cited Public Resources Code Section 21080(b)(5), which allows denial of a project without preparing a CEQA analysis, for its CEQA finding on the project. The Court of Appeal found that the statutory exemption embodied in Section 21080(b)(5) did not apply in a situation like this one where denial would lead to the closure of the airport and the transferral of pilots and operations to other airports.

The Supreme Court disagreed. While it has traditionally construed CEQA broadly "to afford the fullest protection to the environment within the reasonable scope of statutory language," it does not balance the policies served by statutory exemptions against the goal of environmental protection. The Supreme Court held that:

> "The Court of Appeal erred by deeming the consequences of a project denial to be part of the project itself. Its reasoning would effectively abrogate the statutory exemption for projects disapproved by a public agency. (citation) In many cases, disapproval of a proposed project could have possible environmental impacts associated with alternative courses of action. 'Yet the Legislature has determined for reasons of policy to exempt project disapprovals from environmental review under CEQA. Our state legislators evidently concluded that public agencies should not be forced to commit their resources to the costly and time-consuming environmental review process for proposed private development projects slated for rejection, whatever the reason for agency disapproval. This court does not sit in judgment of the

> Legislature's wisdom in balancing such competing public policies. (*Napa Valley Wine Train, Inc. v. Public Utilities Com.* [*supra*,] 50 Cal.3d 370, 376.)' (*Main San Gabriel Basin Watermaster v. State Water Resources Control Bd.*, *supra*, 12 Cal.App.4th at pp. 1383-1384.) As we noted in *Napa Valley Wine Train,* the very purpose of the statutory CEQA exemptions is to avoid the burden of the environmental review process for an entire class of projects, even if there might be significant environmental effects. (*Napa Valley Wine Train*, *supra*, 50 Cal.3d at p. 381.)"

***Bus Riders Union v. Los Angeles County Metropolitan Transportation Agency* (2009) 179 Cal.App.4th 101**

After a series of workshops and meetings, the Metropolitan Transportation Agency (MTA) voted to raise its basic fare for bus and rail riders by 25 cents. This was the first such increase in about 20 years. MTA cited the statutory exemption for the setting of "rates, tolls, fares, and other charges" for the purpose of "obtaining funds for capital projects necessary to maintain service within existing service areas" under Public Resources Code Section 21080(b)(8) and did not undertake a CEQA analysis for the fee increase. MTA's decision was backed by evidence in the record of a projected $1.8 billion structural budget deficit, increased costs for providing transit service, as well as its transfers of funds from other accounts to keep transit fares artificially low. In fact, MTA's fare recovery ratio dropped from 44 percent in 1989 to 24 percent in 2006.

The Bus Riders Union sued to force preparation of a CEQA document. The trial court held for the Agency and the Court of Appeal affirmed.

The Agency bears the burden for showing that substantial evidence supports its finding that a particular CEQA exemption applies. The Agency had done so, as noted above. Further, in its resolution approving the fare increase, the Agency board declared its intent to use the increased revenue solely for maintaining service within its existing service areas. Whether the new revenues from the fare increase enabled MTA to use funds previously diverted to transit for other uses was irrelevant. The Court noted that the statutory exemption places no limits on the use of an agency's funds freed up by virtue of a fare increase.

***California Unions for Reliable Energy v. Mojave Desert Air Quality Management District* (2009) 178 Cal.App.4th 1225**

The lawsuit centers around the Air District's "Rule 1406." Rule 1406 offers the use of road paving as an offset for PM10 dust production and establishes a protocol for calculating paving offsets. The Air District adopted a Class 8 (Section 15308) Categorical Exemption when adopting Rule 1406, as an action taken "to assure the maintenance, restoration, enhancement, or protection of the environment" pursuant to a regulatory process. California Unions sued, alleging that Rule 1406 would result in the paving of 5,000 miles of roads within the air basin, thereby creating a significant environmental impact.

The trial court held for the Air District. The Court of Appeal reversed that decision.

In short, the Court held that:

> "CEQA does not demand the impossible; it simply requires public agencies to consider the reasonably foreseeable environmental effects of their actions. Plaintiffs may have overstated their case a bit by harping on the unlikely possibility that Rule 1406 may result in the paving of all 5,000 miles of unpaved road within the District's jurisdiction. Still, it is reasonably foreseeable -- indeed, it is almost undeniable -- that the adoption of Rule 1406 will result in *some* road paving. Plaintiffs showed that road paving would tend to have adverse environmental effects; the District, for its part, failed to show that these effects would be either de minimis or too speculative to analyze. Accordingly, there was insufficient evidence

> to support the District's finding that the adoption of Rule 1406 would "*assure* the maintenance, restoration, enhancement, or protection of the environment . . . ." (Cal. Code Regs., tit. 14, § 15308.)" (emphasis in original)

California Unions submitted an 89-page comment letter on the Rule during its preparation, alleging potential air quality, biological, and growth-inducing impacts. California Union's air quality experts asserted that Rule 1406's 1:1 offset ratio effectively trades a pound of PM 10 from road dust for a pound of PM10 from combustion, plus PM2.5 not resulting from road dust. The resultant PM10 would stay in the air longer, spread more widely, and have a greater potential to cause disease and impacts on biological resources. The Air District responding by stating that an analysis of the effects of PM10 would be speculative and noting that any such impacts would be analyzed on a project-by-project basis as individual development projects availed themselves of the paving offsets.

The Court found that the Air District had characterized their CEQA project (i.e., adoption of Rule 1406) too narrowly. In order to examine the "whole of the action" as required by CEQA, the Air District needed to look at the indirect effects of adopting its Rule, that is, the potential effects of road paving. The Air District carries the burden of proof to show that a Class 8 exemption applies – that is that the maintenance, restoration, enhancement, or protection of the environment would be assured. "In the *absence* of evidence that the negative environmental effects of Rule 1406 would *not* be significant, the exemption finding cannot be sustained." (emphasis in original)

The Court expressed concern that if Rule 1406 were adopted without CEQA review then future concerns over the impacts of its application could not be litigated because the statute of limitations would have run on any CEQA challenge to the Rule. Once in place, the rule would preclude arguments that the offsets' project-specific impact should be reviewed.

The Court invalidated Rule 1406 and the Air District's use of the Class 8 exemption. However, it left the door open for the Air District to use a Class 8 exemption when reconsidering Rule 1604 provided that it can document that there would be no negative environmental effects.

***Great Oaks Water Company v. Santa Clara Valley Water District* (2009) 170 Cal.App. 4th 956**

In this case, Great Oaks Water Company (Great Oaks) challenged the Santa Clara Valley Water District's (SCVWD) use of a statutory exemption in conjunction with the SCVWD's resolution raising groundwater charge rates. The change in rates was supported by the SCVWD's voluminous and detailed annual activities report. Under its enabling act, the SCVWD's groundwater charge is a basic user charge for the "furtherance of district activities in the protection and augmentation of the water supplies for users within … the district that are necessary for the public health, welfare and safety." Great Oaks is subject to the groundwater charge because it taps groundwater that is within the SCVWD, hence its concern over the raised rates.

This exemption under Public Resources Code Section 21080(b)(8) applies to a public agency's setting of rates, tolls, fares, and other charges for the purposes of meeting operating expenses; purchasing or leasing supplies, equipment, or materials; meeting financial reserve needs; or obtaining funds for capital projects necessary to maintain service within existing service areas. The agency must make written findings describing how its circumstances fit these requirements when adopting the exemption. The exemption cannot be used for rate increases to fund capital projects for the expansion of any system.

Great Oaks alleged that SCVWD had failed to make the requisite findings and that SCVWD intended to use a part of the fee to fund an expansion of its system. The trial court decided in favor of SCVWD.

The Court of Appeal upheld the lower court's decision. The Court found that the SCVWD's fee resolution properly referenced the annual report, which constituted substantial evidence in support of the fee. The court concluded that SCVWD "minimally satisfied this [findings] requirement by its identification of the statutory purposes for which it claimed its action to be exempt—the ultimate factual bases for the claim of exemption—coupled with the District Board resolution's references in related findings to portions of the annual report and other information and evidence provided during the hearing process, all of which are part of the record." Looking at the totality of the resolution and its findings, the Court found that it could "readily ascertain the analytic route that the District traveled from evidence to action." Furthermore, nothing in the record shows that any of the projects to be funded through the fee would have the actual effect of expanding the SCVWD's total services or system.

***Health First v. March Joint Powers Authority* (2009) 174 Cal.App. 4th 1135**

The former March Air Force Base (AFB) was closed by the Air Force in 1996. At that time, the Department of Defense adopted a reuse plan on the basis of an Environmental Impact Statement. The March Joint Powers Authority (JPA) adopted a redevelopment plan for the base shortly thereafter, based on an Environmental Impact Report (EIR). In 1999, the JPA adopted a general plan for the conversion of the former AFB that laid out various uses for the land, including a business park and areas for industry. The general plan anticipated using specific plans and a design review process to approve future development, all of which were analyzed in a Master EIR.

Finally, in 2003, the JPA adopted a specific plan for the "March Business Center" and certified a Focused EIR for that plan. The specific plan established guidelines for future business park, industrial, and other development. The Focused EIR was intended to provide project-level analysis of these future uses.

Along with the specific plan, the JPA adopted the March Business Center Design Guidelines, which set specific design standards and an extensive "yes/no" consistency checklist by which an Implementation Committee reviews site-specific projects. The scope of the Design Plan review is limited to whether or not a project conforms to the adopted plans and standards.

This dispute arose over the Implementation Committee's condition approval of the Design Plan application for a warehouse distribution center for Tesco's "Fresh and Easy" neighborhood markets in several states. The JPA deemed the approval of the Design Plan application "ministerial" and therefore, found it statutorily exempt from CEQA. Health First challenged the permit, contending this to be a discretionary action subject to CEQA. The Court of Appeal reviewed the CEQA issue "by independently determining whether the administrative record demonstrates any legal error by the Authority."

The Court concluded that the Design Plan application review is a ministerial act and was properly exempted. The Court made several points in reaching its conclusion:

(1) "The reuse plan for the March property has [previously] been subject to at least four kinds of environmental review."

(2) "[R]eview of Tesco's Design Plan Application by the Authority and the Implementation Committee involved deciding whether the application was consistent with the requirements, fixed standards, and proposed mitigation of the Specific Plan, the Focused EIR, and the Design Guidelines. The Implementation

Committee accomplished its review by completing a checklist of about 125 yes-or-no questions. In doing so, the Implementation Committee exercised no discretion and instead acted ministerially."

(3) "The Tesco facility is not a discrete CEQA project, but one component of the Specific Plans for the larger March Business Center."

(4) "[T]he Specific Plan and Focused EIR offer a comprehensive environmental review of the proposed industrial development as eventually implemented by Tesco."

(5) "The Conditions of Approval attached to the Design Plan approval expressly provide that Tesco must comply with the Focused EIR and the Specific Plan. . . Because the mitigation plan applies to the Tesco facility without alteration or modification, Health First cannot argue that the mitigation measures are being implemented in a discretionary fashion."

***Las Lomas Land Co. v. City of Los Angeles* (2009) 177 Cal.App. 4th 837**

After several years of review of preliminary applications, including draft environmental studies, in 2007 Las Lomas submitted to the City a Master Land Use Permit Application for a specific plan, development agreement, prezoning, and development entitlements for development of a 555-acre site located north of the city limits and south of the neighboring City of Santa Clarita. The project included over 5,500 residential units, 2.3 million square feet of office space, 250,000 square feet of retail, a 300-room hotel, and open space. Before an EIR was completed for the proposal, the City Council voted to cease all work on the proposal, not pre-zone the site, not process an EIR, and return all materials to the applicant. In effect, the City denied the project without a CEQA document, relying on the statutory exemption for such situations.

Las Lomas sued the City, contending that the City had a mandatory duty to complete and consider an EIR before denying the project. Las Lomas also claimed violations of its due process rights and equal protection under the Constitution. The Court of Appeal cited Public Resources Code Section 21080, subdivisions (a) and (b)(5) as clearly providing that CEQA applies only to projects that a public agency intends to carry out or approve, not projects that the agency rejects. "To require a public agency to prepare and circulate a draft EIR and prepare a final EIR including responses to comments, before rejecting a project would impose a substantial burden on the agency, other agencies, organizations, and individuals commenting on the proposal, and the project applicant. Such a requirement would not produce any discernible environmental benefit and would not further the goal of environmental protection."

Furthermore, the Court concluded that "if an agency at any time decides not to proceed with a project, CEQA is inapplicable from that time forward." In other words, an agency may reject a project at the stage of preliminary review, as well as after substantial review, without having to prepare a CEQA document. Las Lomas argued that *Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.4th 215 (City ordered to complete an EIR within the one-year period established by statute) stood for the proposition that an agency must complete an EIR once it has begun. The Court disagreed, noting that the *Sunset Drive* decision was not on point because Redlands had not acted to deny that project.

The Court also dismissed Las Lomas' due process and equal protection claims. On the issue of procedural due process, the Court stated that:

> "A person seeking a benefit provided by the government has a property interest in the benefit for purposes of procedural due process only if the person has "a legitimate claim of entitlement to it." [citation] A benefit is not a protected property interest under the due process clause if the decision maker has the discretion to grant or deny the benefit. [citation] Whether such discretion exists is determined by reference to state and local law."

Ownership of the property is not sufficient to trigger due process protection where the City had the discretion to deny development proposals.

> "Las Lomas proposed the annexation of the site and approval of a development agreement, a specific plan, and development entitlements for the project. The city's decisions whether to seek to annex the site, enter into a development agreement, and adopt the proposed specific plan were discretionary decisions. Las Lomas can assert no claim of entitlement to the annexation, development agreement, specific plan, and development entitlements that it seeks. The city's denial of those benefits and decision not to proceed with the project

therefore was not a deprivation of property for purposes of procedural due process under the Fourteenth Amendment. [citation]"

Negative Declaration Cases

***Inyo Citizens for Better Planning v. County of Inyo* (2009) 180 Cal.App.4th 1**

In 2005, Inyo County amended its 2001 General Plan to define "net acreage" as the gross acreage of property, minus roads. The definition under the 2001 General Plan included utility easements in addition to roads. Inyo Citizens argued that the IS/ND adopted for the revision failed to consider growth inducement and related impacts on water supply that might result from allowing smaller lots to qualify for subdivision.

The Court agreed. There was a fair argument, based on testimony from residents regarding groundwater levels and biology, and past Planning Department testimony on the 2001 General Plan's definition of net acreage (in 2002 County staff told the Board of Supervisors that a strict interpretation of the 2001 GP's definition could "virtually place a moratorium on development…"). The Court didn't buy the County's contention that the revision simply clarified long-standing policy. The Court pointed out that didn't ring true given the debate that occurred over the proposed amendment. The General Plan amendment was overturned and the County directed to prepare an EIR if it wishes to move forward with the amendment.

Inyo Citizens also challenged a tentative subdivision map that was approved under the 2001 definition of net acreage. Inyo Citizens argued that the County didn't correctly apply the 2001 definition to the lot sizes being created and that there was a potential for environmental impact. The Court did not agree with Inyo Citizens' pleadings. Inyo Citizens failed to show that the County's application of the 2001 definition was improper and that it would relate to impacts. The Court noted that Inyo Citizens had not adequately made their points in the administrative record and that it would not make their arguments for them.

***California Native Plant Society v. County of El Dorado* (2009) 170 Cal.App. 4th 1026**

A little setting is necessary before describing the facts of this case. El Dorado County adopted its Ecological Preserve Fee Program (Fee Program) by ordinance in 1998. The ordinance provides, in part, for the establishment of three mitigation areas, with payment of an in lieu fee or participation in the rare plant off-site mitigation program considered mitigation for development in Areas 1 and 2. The ordinance requires the fee to be reviewed on an annual basis and adjusted as necessary. The ordinance was deemed exempt from CEQA when it was adopted, so no environmental review was conducted. The County has never reviewed the fee levels originally set in 1998.

As part of the program, the County has acquired the Pine Hill Ecological Preserve (Preserve). The Preserve is administered by the Bureau of Land Management (BLM). Among its attributes, the Preserve encompasses parts of the rare plant species and communities found in the western El Dorado County gabbro formation. The U.S. Fish and Wildlife Service (USFWS) subsequently adopted a non-binding, non-regulatory recovery plan for six species of plants endemic to the larger Pine Hill formation. The County, USFWS, California Department of Fish and Game (DFG) pledged to coordinate project reviews whenever the gabbro-dependent species were at risk.

The County's 2004 General Plan discusses the Fee Program, the Preserve, and the recovery plan and includes policies intended to protect gabbro-dependent species. The General Plan EIR found that significant unavoidable impacts will occur to these species despite the Fee Program and Preserve and that no further feasible mitigation is available.

The project that prompted the present litigation is an Eskaton congregate care facility for the elderly proposed to be located adjacent to the Cameron Park unit of the Preserve. This property was the largest remaining contiguous habitat parcel in the area and was within the recovery plan. It

supported a rare species of ceanothus and an endangered morning glory species, among other special status species. The County prepared a mitigated negative declaration (MND) for the project that included establishment of a 0.385-acre morning glory preserve north of the site (requiring transplantation of the four plants within the development footprint to that site) and payment of the ecological preserve fee.

Testimony from the Preserve manager, USFWS staff, and others during and after the County's hearings on the project pointed out that the proposed mitigation did not cover the ceanothus and three other rare plant species that occur on the parcel. The USFWS staff, who had learned of the project just before the Planning Commission hearing, was concerned that it had not been consulted with regard to mitigation, including potential "take" of federally-listed plant species. Further, USFWS staff stated that the proposed mitigation plan was not adequate to actually save the plants.

In response to the concerns of these agencies, the applicant proposed a set of revised mitigation measures that included donating a little less than 6 acres of the site to the Preserve and creating a ceanothus propagation plan based on transplanting cuttings to the enlarged preserve area. The applicant claimed that this exceeded the requirements of the County's General Plan and Fee Program.

The proposal, with the revised mitigation measure, was heard by the County Board of Supervisors. Although the proposed revision to the mitigation was not made available to the other agencies or the public until the day before the hearing, County staff noted that the MND did not need to be re-circulated because the substitute mitigation was superior to the original. The Preserve manager, staff from the USFWS, and a biologist with the California Native Plant Society (CNPS) testified that they had not had time to fully analyze the proposed mitigation. The Board continued its action and before its second hearing, DFG submitted comments to the effect that they believed that the revised mitigation remained inadequate. Separately, the CNPS testified and submitted a letter documenting why it believed the new mitigation to be inadequate, including the lack of evidence that transplantation could be effective and a lack of detail in the propagation plan. The Board ultimately adopted the revised MND and approved the project, including related general plan and zoning amendments.

The CNPS sued. The trial court held for the County and the Court of Appeal reversed that decision. The Court found that there was substantial evidence to support a fair argument under the mandatory findings of significance (Guidelines Section 15065) that the project "has the potential to … threaten to eliminate a plant or animal community [or] substantially reduce the number or restrict the range of an endangered, rare, or threatened species."

The expert opinions of the Preserve manager, USFWS staff, and the CNPS biologist – all of whom were familiar with both the resource and the fee program – were supported by substantial evidence of impacts on the plants. In addition, the mitigation measure proposing transplantation was not based on any species-specific knowledge. The CNPS and Preserve manager introduced documentation indicating that transplantation was unlikely to work. The project consultant's proposal to undertake an unproven mitigation approach undercut their credibility in the eyes of the Court.

The Court further concluded that while payment into a fee program can be mitigation and there is a presumption that any fees collected will be used for the appropriate purposes, the County's Fee Program could not be relied upon to mitigate impacts to the plants. The Court cited a couple of reasons for this. First, the amount of the fee had never been reviewed since the adoption of the Fee Program (as required by the fee ordinance itself). The Court declared that it was "troubled" by the failure of the County to annually review and, if necessary, revise the fee. "Under the County's view and apparent practice, the amount paid by developers diminishes with inflation and ultimately will become but a token. The result is an evasion of CEQA." This lack of review, in light of changes in

land values, made the fee's relationship to mitigation of the project's impacts speculative in the Court's opinion.

Further, the Fee Program had never been reviewed under CEQA. The Court held that a mitigation fee that had never been subject to a CEQA document could not be relied upon to avoid all significant impacts.

> "The County has no power to craft blanket exemptions to the CEQA statutes and interpretive regulations, nor to pass an ordinance to satisfy future CEQA requirements, absent some CEQA review as to the ordinance."

The General Plan EIR provided the only analysis undertaken of the Fee Program, albeit not at the site-specific level. That EIR concluded that the cumulative impact of development on rare plant habitat was significant and unavoidable. For an in-lieu fee to qualify as full mitigation, the Court opined, it must have been evaluated by a CEQA document when it was adopted or on a project-specific basis.

The question of whether the MND should have been recirculated before its adoption was not addressed in the published portion of this case.

While this case has been working its way through the courts, the Eskaton facility has been nearly completed. Nonetheless, the Court concluded that its impacts on gabbro-dependent plants may still be mitigated. The Court ordered the trial court to issue a writ ordering the County to prepare an EIR to assess the appropriate rare plant mitigation measures for the project.

EIR Cases

***Planning and Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210**

This is the latest chapter in a long adventure tale about the Water Agency's attempt to transfer 41,000 acre-feet (AF) of water from the Kern Water Agency to its supply, and the environmentalists attempt to stop the transfer. In previous action, the Friends of the Santa Clara River were successful in halting the transfer (*Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373 [a project EIR tiered upon the invalidated EIR for the "Monterey Agreement" was itself invalid]). A later unpublished Appellate Court decision denied the Friends of the Santa Clara River's request for an injunction to stop the transfer. Finally, this case has arisen over the revised EIR prepared by the Water Agency and certified in 2004 for this project.

The PCL presented several arguments:

- the Castaic Lake Water Agency was not the proper lead agency for this project (they claimed that the Department of Water Resources should be the lead because it is developing the revised Monterey Agreement and that Agreement is crucial to this transfer);
- the 2004 EIR did not correctly characterize the relevance of the Monterey Agreement EIR to this project; and
- the 2004 EIR contained substantive errors.

The City countered that the case was barred by the principle of Res Judicata, because it was essentially rearguing the case over the 1999 EIR. The Court dismissed this argument. Friends of the Santa Clara River was no longer a party to the litigation and the prior litigation was over an EIR distinct from the one at issue.

The Court concluded that the Water Agency is the correct lead agency for this, their own project. Although DWR has a direct role in preparation of the new EIR for the Monterey Agreement, it is not carrying out this project.

The Court held that the Castaic Lake Water Agency's water transfer is a separate project from the Monterey Agreement – the proposed transfer could have been done under the pre-Monterey Agreement water allocations and is proposed to move forward regardless of the outcome of the Monterey Agreement. Further, the water transfer has its own independent and local utility. The 2004 EIR discussed the Monterey Agreement and the environmental impacts of that Agreement in sufficient detail to fully inform decisionmakers. In addition, the 2004 EIR adequately addressed how the Water Agency's water transfer fit into the bigger picture of the Monterey Agreement and the data differences between its findings and those of DWR.

The Court upheld the 2004 EIR's description of the no-project alternative was adequate. Because the Monterey Agreement is currently in effect, the no-project alternative would consist of no transfer with existence of the Monterey Agreement. It dismissed PCL's claim that the no-project alternative should be: no transfer, no Monterey Agreement.

***Schellinger Brothers v. City of Sebastopol* (2009) 179 Cal.App.4th 1245**

Schellinger proposed to develop a residential and commercial project on 10 acres within the City. Over the course of several years, and on the basis of give and take between the developer, the city and the opposing neighbors, the project went through a number of revisions. What began in 2001 as 182 residential units and a 16,300 square foot neighborhood commercial center evolved into 145 residences and no commercial component by 2003, then by 2006 into 125 units and 2,335 square feet of commercial. During this period, a draft EIR was prepared and released for public review, several planning commission hearings were held, the project application was resubmitted several times, a second draft EIR was recirculated for public review, and the project went through an unsuccessful mediation with the applicant, City, and neighbors.

In 2006, Schellinger demanded that the City approve the proposal in its 2003 form. The City instead decided that the draft EIR should be revised and recirculated a second time. Schellinger filed suit, alleging that the City had violated its obligation to certify an EIR within one year of submittal of a complete application. The trial court decided in favor of the City.

The Court of Appeal affirmed the judgment. On appeal, Schellinger requested that the Court order certification of the 2003 EIR, order the city to take final action on the 2003 project, and provide Schellinger its day in court on its complaint for damages.

The Court held that CEQA "does not fix the one-year period in cement," nor does the Housing Accountability Act (Government Code Section 65589.5 requires findings for denial of an affordable housing project) mandate automatic approval if the deadline isn't met. Schellinger argued that the 1999 *Sunset Drive* decision established a strict one-year timetable for certification of an EIR. The decision in *Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.4th 215 held that Redlands was required to complete and certify an EIR that it had failed to act on within the one-year period.

The Court distinguished the situation in *Sunset Drive* from the present case and dismissed this argument. The plaintiff in *Sunset Drive* sought to compel the City to certify the EIR, in any form. Here, Schellinger is requesting the Court to direct the City to certify a particular version of the EIR (an action the Court found is outside its authority). In *Sunset Drive*, the City failed to act on the EIR, despite the urging of the applicant. Here, the City was actively involved in pursuing completion of the EIR – "the situation is not that the local agency has refused to exercise its discretion, but it has in effect never stopped exercising that discretion, and, if anything, has over-exercised it." Finally, in *Sunset Drive* the applicant was not the reason for the delay in the CEQA

document. Here, the situation is "entirely different;" with the record showing that Schellinger made repeated changes in the scope of the proposal that could require additional CEQA analyses. In the words of the Court: "Because practical realities must be acknowledged, the constantly changing scope and contents of the project meant that the City was facing a project application that may not have been "well enough defined 'to provide meaningful information for environmental assessment.'" (*Save Tara v. City of West Hollywood*, *supra*, 45 Cal.4th 116, 135, 139, quoting CEQA Guidelines § 15004(b).)"

The Court noted that, given the amount of time that had passed, "a very good case could be made that Schellinger did not seek relief in a timely fashion" (i.e., shortly after the one-year period had run). Because the City had not acted illegally, the Court did not address Schellinger's claim for damages. The Court's final conclusion is worth repeating:

> "Like other courts, we are not insensitive to the possibility that CEQA review is subject to manipulation and elongation that may verge on abuse of the process. (E.g., *Laurel Heights Improvement Assn. v. Regents of University of California*, *supra*, 6 Cal.4th 1112, 1132 ["the Legislature did not intend to promote endless rounds of revision and recirculation of EIRs. . . . '[R]ules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement.' "]; *Big Rock Mesas Property Owners Assn. v. Board of Supervisors* (1977) 73 Cal.App.3d 218, 229 [" 'Preparation of an EIR need not be interminably delayed . . .' "]; cf. *California Trout, Inc. v. Superior Court* (1990) 218 Cal.App.3d 187, 203 ["An administrative agency has no discretion to engage in unjustified, unreasonable delay in the implementation of statutory commands"].) Simply looking at a calendar lends a considerable force to Schellinger's position. However, as we have shown, Schellinger was not a helpless bystander on a perpetual merry-go-round, but an active participant of the CEQA process as it stretched into 2004, 2005, 2006, 2007, and 2008. Moreover, even if some of the reasons were extraneous and in no sense attributable to Schellinger [citation], they added a dimension of complications that distinguished this proposed project from the run-of-the-mill development. Thus, after our de novo review, we reach the same conclusion as the trial court—whatever sympathy we may have for Schellinger's situation, it is simply not entitled to the relief it seeks."

***Tracy First v. City of Tracy* (2009) 177 Cal.App. 4th 912**

The City approved a specific plan amendment and conditional use permit to allow construction of a 95,900 square foot WinCo Foods store on the basis of an EIR. Tracy First brought suit alleging, among other things, that the City Council's revisions to the Final EIR required referral to and consideration by the Planning Commission before the Council could take final action on the project.

The Court of Appeal dismissed this argument. The Planning Commission is an advisory body to the City Council on legislative matters such as the amendment of a specific plan. As a result, the CEQA Guidelines require that the Planning Commission review and consider the project's EIR "in draft or final form" (Guidelines Section 15025). The Tracy Planning Commission complied with this requirement in its deliberations on the project.

During its separate deliberations, the City Council requested that staff provide additional information that was incorporated into the EIR before it was certified. The amendment to the EIR included changes to the sections on land use and economics (urban decay), traffic, and air quality. In addition, a new section was added on energy conservation. Once this information was added to the EIR, the EIR itself was re-circulated for public comment. No changes were made to the project. Prior to approving the project, the Council certified the Final EIR that was prepared after the re-circulation.

Government Code Section 65356 provides that any substantial change to a project proposed by a city council that was not previously considered by the planning commission must be sent back to the commission for consideration before the council can take final action. The Court found that there is no explicit requirement in CEQA for commission reconsideration of an EIR that has been amended by the city council.

Tracy First also alleged that the City had failed to properly address the alternatives analysis by including alternatives that did not reduce project impacts and by omitting a reduced-size alternative. The Court dismissed the first allegation because Tracy First had not raised it during the project's administrative proceedings. Tracy First did raise the reduced-size alternative during the proceedings and, although the point was raised at the final hearing on the project, the City was obligated to consider it and it could be raised in litigation. However, the Court dismissed this claim as well, because "the record does not establish that a reduced-size alternative would substantially diminish any of the significant environmental impacts of the project." Without supporting evidence for their contention, the validity of the claim cannot be determined. The Court distinguished this from the decision in *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336 where a reduced-size alternative to a proposed Lowe's Home Center would have clearly mitigated the impact on cultural resources by avoiding the need to demolish a historic building.

Tracy First asserted that the City had failed to comply with Appendix F of the CEQA Guidelines in assessing the project's potential energy use. The EIR had discussed energy use in terms of similar stores and identified actions that would be taken to make the WinCo store an efficient consumer of energy. In fact, the EIR noted that the WinCo would be 25% more energy efficient than required under Title 24 energy code standards. Tracy First argued that Title 24 establishes a minimum energy efficiency standard, while CEQA may require more analysis and mitigation where a project may result in inefficient energy use. The Court dismissed this argument. The City may rely on Title 24 energy efficiency standards in determining that the project would not have a significant energy impact. CEQA does not preempt Title 24.

Tracy First contended that the EIR's analysis of energy efficiency was inadequate because it did not closely follow Guidelines Appendix F. The Court concluded that "neither Appendix F, itself, nor any other authority requires that an EIR discuss every possible energy impact or conservation measure listed in Measure F."

The EIR did not address energy use in the northern portion of the project site in detail, because there was no specific development being proposed there. The Court dismissed Tracy First's claim that the analysis improperly divided the project. The analysis of the northern portion reflected the level of information available about future uses.

Tracy First's last issue of contention was the mitigation of extraterritorial impacts. The EIR's traffic study found that the project would significantly affect two intersections located outside the City. The study recommended specific mitigation actions and the County commented that the mitigation should include a "fair share" contribution for work on the intersections. The County's traffic mitigation fee program, however, did not identify these two intersections as facilities to be funded through the program. The City concluded that without a plan for improvements and a financing mechanism, and without the ability to impose an improvement plan on the County, mitigation was not feasible and the impact would be significant and unavoidable. The Court agreed with the City. Under these particular circumstances, mitigation could not be "fully enforceable" since there was no way to insure that required mitigation funds would actually go towards the identified mitigation.

***City of Long Beach v. Los Angeles Unified School District* (2009) 176 Cal.App. 4th 889**

Long Beach sued LAUSD over the EIR prepared for "South Region High School Number 4," a proposed new high school with a projected capacity of 1,800 students in grades 9-12. The site

selected by LAUSD was one of eight examined that could relieve Carson and Banning High Schools, which are operating at well over their student capacities. In addition to the EIR, the LAUSD prepared a Health Risk Assessment (HRA), Pipeline Safety Study (PSS), and Rail Safety Study (RSS) for the proposed school. The EIR incorporated by reference LAUSD's New School Construction Program EIR that reviews the district's school construction process.

The City asserted that the High School EIR failed to adequately analyze the project's impacts; improperly deferred mitigation measures; failed to respond adequately to comments; and failed to include adequate assessments of air quality, health and safety, traffic, land use, cumulative impacts, and reasonable project alternatives. The City also claimed that the LAUSD failed to adopt feasible mitigation measures. The trial court found in favor of the LAUSD and denied the City's writ. This appeal followed.

The Court of Appeal upheld the decision of the trial court. CEQA establishes specific requirements for the analysis of air quality, toxic substances, and pipelines that apply to proposed schools. The Court found that the LAUSD had complied with all of these requirements.

The air quality mitigation measures and the EIR's conclusion that impacts would be less than significant were based on the findings of the HRA. This provided a reviewer sufficient detail to describe the route the agency took "from evidence to action." Further, the HRA provided specific analyses of increasing truck activity in the area, contrary to the City's contention. The FEIR's response to the City's comment on truck activity was sufficiently detailed to be commensurate with the level of detail in the comment and demonstrated a good faith analysis.

The City also challenged the EIR's conclusions regarding cumulative impacts. Here the Court made an odd distinction between a project's impact on the environment and the impact of the environment on the project – contending that the latter is not required to be analyzed under CEQA. Accordingly, the EIR was not required to consider the cumulative effects of air quality on staff and student health. While this may be case from a practical point of view in the situation presented here, the holding that CEQA does not consider the impact of the environment on the project seems unreasonable in many other situations such as consideration of wildfire hazard or other risks where the level of risk is defined by the extent to which the project might be affected.

Moving on, the Court found that the City properly defined the areas within which it considered cumulative projects. The EIR's conclusion that the project would not contribute to cumulative air quality impacts was supported by the fact that the project would reduce vehicle miles travelled under current conditions (since students would not need to go to the more distant existing high schools). Similarly, since the proposed school would not generate new hazards, it would not have a considerable contribution to cumulative impacts associated with hazards or hazardous materials. The project's traffic impact analysis provided evidence to support the EIR's selection of the study intersections and geographic area covered in its cumulative traffic analysis.

The Court held that the RSS sufficiently examined the potential for accidents on nearby rail lines to result in spills of hazardous materials. A mitigation measure requiring a diversion wall along school frontage nearest the rail lines was adequately linked to this impact and LAUSD emergency response procedures for the school. Attempting to analyze each specific chemical that might theoretically be carried by trains in the future (particularly since the railroad would not provide specific information about its manifests) would be speculative and infeasible, and therefore was not required.

The traffic impact analysis for the project included an analysis of pedestrian safety. The EIR included specific mitigation measures to address that impact within identifiable timelines. There was no evidence to support the City's contention that the analysis in the Final EIR was flawed (a mistake in the DEIR was corrected prior to certification of the Final EIR and the impact conclusion found to be unchanged) and that mitigation had been improperly deferred.

The traffic impact analysis included a detailed discussion of parking demand and supply. The analysis demonstrated that there would be nearly three times more spaces in the area than demand for spaces generated by the school or its activities.

The City also argued that the school was inconsistent with its general plan, an impact that the EIR instead held was less than significant. The Court stated that an EIR need discuss inconsistencies with a general plan, but need not include a discussion when the project is consistent with the general plan. In this case, the initial study examined the City's general plan and concluded that the school was consistent with the surrounding land use designations. Subsequently, the LAUSD exempted the school from consistency with city zoning requirements, as allowed under Government Code Section 53094(b). The Court found that this was sufficient to meet the requirements of CEQA.

The City contended that the EIR did not evaluate a reasonable range of alternatives. The Court found that the record contained sufficient evidence to support the LAUSD's dismissal of most of the potential alternatives it examined. Many of the alternative sites, for example, failed to meet state school siting guidelines. The EIR's 29 pages of discussion of alternatives and nine page matrix comparing alternatives demonstrated a good faith effort at meeting CEQA's requirements for alternatives analysis.

***California Oak Foundation v. County of Tehama* (2009) 174 Cal.App. 4th 1217**

The California Oak Foundation sued Tehama County over its approval of the Sun City Tehama Specific Plan and EIR. In the published portion of this case, the Court of Appeal held that four documents sent to Tehama County by an outside law firm retained to provide advice on CEQA compliance were subject to attorney-client privilege and work-product privilege and therefore were not subject to public disclosure. The Court considered whether Public Resources Code Section 21167.6, which describes the contents of the administrative record, abrogates the attorney-client or work-product privileges and concluded that it does not. The Court also considered whether the fact that Tehama shared the documents with the applicant waived privilege and concluded that it does not. The Court noted here that:

> "The purpose of achieving compliance with the CEQA law, reasonably viewed, entails a further purpose. It includes producing an EIR process and product that will withstand a legal challenge for noncompliance. Thus, disclosing the advice to a codefendant in the subsequent joint endeavor to defend the EIR in litigation can reasonably be said to constitute "involvement of third persons to whom disclosure is reasonably necessary to further the purpose of the [original] legal consultation." (See *OXY Resources*, *supra*, 115 Cal.App.4th at p. 890; *id.* at pp. 893, 899 [joint defense agreement in issue endeavored to protect prelitigation communications].)"

While the County won this point, it lost the case. In the unpublished portion, the Court held, at least in part, against the County. The Court ordered that the County set aside its approval of the project and reconsider its decision.

***California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App. 4th 603**

The project at hand is the proposed 530-acre "Preserve at Sunridge," consisting of single- and multi-family residential, commercial, office, school, park, and open space uses. The site is within the Sunrise-Douglas Community Plan Area and is peppered with existing vernal pools that would be eliminated by the project. The USFWS, Corps of Engineers, and U.S. EPA adopted a "Conceptual Level Strategy" for managing vernal pool habitat within the Community Plan Area in 2004. As proposed, this project was inconsistent with that policy.

The draft EIR prepared for the project identified the direct loss of habitat as a significant effect and required preparation of a "habitat mitigation and monitoring plan" to compensate for the loss. The

draft EIR also identified indirect adverse impacts on the habitat of vernal pool species as a result of alteration of current hydrology in the area. Both the USFWS and the CNPS submitted comment letters critical of the project design and the adequacy of the proposed mitigation. The CNPS further asserted that the creation of artificial vernal pools within the intact vernal pool system would actually have a detrimental effect of its own that was not analyzed in the draft EIR. The final EIR included a new mitigation measure aimed at avoiding off-site impacts.

The City approved the project and found the project to be consistent with its general plan. CNPS brought suit on the basis of CEQA and the Planning and Zoning Law. In the latter case, the CNPS alleged that the project was inconsistent with general plan policies requiring a broader approach to avoiding impacts on vernal pools. The trial court granted judgment in favor of CNPS on both CEQA and Planning Law grounds. This appeal followed.

The Court of Appeal reversed the trial court on CEQA, and narrowed its decision on general plan inconsistency. In addition, the Court agreed that a number of CNPS' issues had not been properly brought before the City during administrative proceedings (failure to exhaust administrative remedies) and therefore were not considered by the Court.

CNPS argued that the EIR failed to describe where off-site mitigation might occur and to analyze the impacts of that mitigation. As a result, they alleged, the mitigation was unlawfully deferred because the mitigation was insufficiently detailed to allow the public and decision makers to make an informed decision about whether it would work (this is basically the same argument that prevailed in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645). The Court disagreed. The city identified the impact – habitat loss – and identified a specific measure (including a replacement ratio of 2:1) calculated to mitigate that impact. CNPS, the Court concluded, had confused two distinct CEQA concepts: (1) whether the formulation of mitigation measures was improperly deferred; and (2) whether the mitigation measures were feasible. CNPS did not specifically argue that the mitigation measures were infeasible. Although the city did not identify any specific mitigation sites, the Court found nothing in CEQA or case law that would require the city to do so.

The CNPS also alleged that the city lacked substantial evidence to support the EIR finding that the proposed off-site mitigation measures would reduce the project's impacts on vernal pools to a less than significant level. Specifically, CNPS pointed out that several expert agencies, including the California Department of Fish and Game and the three federal agencies who are signatories to the Conceptual Level Strategy, had submitted comments critical of the mitigation measures and their ability to mitigate species impacts.

The Court held for the city on this point. CEQA places the burden on the party challenging an EIR to show that it is inadequate. The Court noted that "[p]ointing out that other agencies disagreed with the City's finding that its chosen mitigation measures would reduce the adverse impacts of the Project on the vernal pool and seasonal wetland habitats to less than significant does not show there was insufficient evidence in the record to support the City's finding." In order to show that there was no substantial evidence to support the City's finding, CNPS needed to specifically show why none of the evidence presented by the City in its finding could reasonably support that finding.

The Preserve at Sunridge EIR adopted by reference the EIR prepared for the Sunrise-Douglas Community Plan. That EIR was the subject of the *Vineyard* litigation that went to the California Supreme Court. CNPS argued that the current EIR was faulty in its discussion of groundwater supply and impacts on the Cosumnes River salmon because it relied in part on the Community Plan EIR that was found inadequate in those areas. The Court disagreed, on the basis of exhaustion of administrative remedies. CNPS had not actually raised these specific issues during its comments on the Preserve at Sunrise. Accordingly:

> "If one of those objections is that the current EIR incorporates a faulty or insufficient analysis from an earlier EIR, then the agency is entitled to notice of this objection, so that it can correct the deficiency or explain why it believes there is no deficiency. An objector cannot simply sit back and wait for the earlier EIR to be invalidated, then belatedly assert after the administrative proceeding is complete (as happened here) that the current EIR is defective because it relied on the earlier EIR that has now been invalidated."

The Court distinguished this case from *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373 (EIR invalidated due to tiering upon a decertified EIR). In the *Friends* case, the first tier EIR was decertified after the tiered EIR was on appeal and the court did not consider the issue of exhaustion of administrative remedies. Also, nothing prevented the CNPS from raising the specific issues eventually found inadequate by the *Vineyard* decision during the administrative process.

Regarding consistency with the City's General Plan, the Court held that several policies and actions in the General Plan require the City to ensure that impacts on special status species will be mitigated in coordination with state and federal agencies, and to ensure that preserved habitats have interconnections with other habitat areas. Noting again that CNPS carries the burden of showing that the City did not have substantial evidence to support its findings and that courts will show deference to a city on the issue of interpretations of the city's general plan, the Court held that CNPS failed to show that the City lacked substantial evidence to conclude that it met the habitat interconnectivity requirement of its General Plan. State and Federal agencies' statements that the City's mitigation was inadequate illustrated that there was disagreement, but did not prove to the Court that the City's determination was unreasonable. In addition, the City did consult with state and federal agencies while developing its mitigation measures. The fact that those agencies disagreed with the mitigation's adequacy was beside the point, in the Court's opinion.

Finally, with regard to ensuring the mitigation of impacts on special status species, the Court found that CNPS failed to show that the City did not have substantial evidence to support its findings. Like a broken record, the Court reiterated that '[m]erely pointing to what other agencies though on this point is not enough..." However, the Court determined that the City had not fulfilled the general plan requirement for consultation with other agencies in the design of mitigation measures. The Court concluded that:

> "we cannot reasonably deem this 'coordination' requirement satisfied by the mere solicitation and rejection of input from the agencies with which the City is required to coordinate the design of mitigation measures for the Project. Although our standard of review on the interpretation of the general plan is highly deferential, 'deference is not abdication.' (*People v. McDonald* (1984) 37 Cal.3d 351, 377.) Because we conclude the City's interpretation of the word 'coordination' in this context is unreasonable, deference to the City's interpretation of its general plan in this instance is unwarranted."

In sum, the Court upheld the City's EIR, and ordered directed the trial court to issue a different writ of mandate consistent with the Court of Appeal's holding on general plan consistency.

***California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App. 4th 957**

The City approved a master plan for Arana Gulch, a city-owned greenbelt property, on the basis of an EIR. Among other things, the Arana Gulch Master Plan provided for multi-use trails (including an ADA-compliant path) that would result in significant, unavoidable impacts on Santa Cruz tarplant habitat. The City developed a long-term adaptive management program for the Santa Cruz tarplant as part of the Master Plan. As partial mitigation for the effects of the proposed multi-use trails on habitat, the EIR provided that, to the extent possible, all trail segments are to be aligned to avoid the historic mapped tarplant areas within the Master Plan and that the adaptive management program is to be fully implemented. The EIR examined four project alternatives, including: 1 -- no

project; 2 -- the multi-use trail would not travel through the Port District property; 3 – leaving the east-west through trail unpaved, thereby precluding access for the disabled, but protecting the tarplant; and 4 – providing no paved trails and no east-west connector trail within the Master Plan.

During the comment period and at project hearings, CNPS argued that the range of reasonable alternatives was skewed because not all of the alternatives included ADA compliant, east-west paths. Also CNPS argued that the apparent importance of the Broadway-Brommer Bicycle/Pedestrian Path Connection to the project necessitated that the EIR examine off-site alternatives for a bicycle/pedestrian path connection. After concluding the hearings, the City certified the Final EIR, approved the Master Plan, and adopted findings of fact describing the disposition of the project's impacts and a statement of overriding considerations describing the reasons to approve the project in light of the significant unavoidable impact on tarplant habitat.

CNPS carried these claims forward in the lawsuit that followed the City's approval of the Master Plan. The trial court held for the City and the Court of Appeal affirmed that judgment.

With regard to the need for each alternative to include an ADA compliant path, the Court found that there was no evidence in the record that an ADA compliant path was a necessary component of the Master Plan. It was simply one of 10 objectives, and the EIR did examine an ADA compliant path (albeit a north-south path) in one of the alternatives. Separate from the alternatives section, the EIR discussed multi-use trails, including an east-west trail, as well as previous studies of the topic. The Court concluded that "the EIR … does not omit any required information necessary to informed decision-making and public participation concerning this issue." There is no requirement in CEQA "that the alternatives selected must satisfy *every key objective* of the project (emphasis in original)."

Regarding the need for an off-site alternative (ostensibly to avoid the impacts of the east-west Broadway-Brommer Bicycle/Pedestrian Path Connection on tarplant habitat), the Court found that the Final EIR's response to comments on this issue were adequate. There's no requirement that an EIR include an off-site alternative in every case. The east-west ADA compliant, multi-use trail is a component of the project. CEQA's requirement to examine alternatives applies only to the project as a whole, not to its various facets – the project here is the Arana Gulch Master Plan, not an east-west bike path. The fact that the City had previously prepared an EIR for the Broadway-Brommer Bicycle/Pedestrian Path Connection that had separately looked at alternative routes also provided the Court with evidence that there was no need for an off-site alternative.

Moving to the adequacy of the City's findings of infeasibility for the alternatives, CEQA provides that a project cannot be approved if there are feasible alternatives that would substantially lessen its environmental effects. The Court rejected CNPS' claim that the fact the four alternatives were feasible enough to include in the EIR required the City to consider them feasible for purposes of project approval. In explaining why it found the CNPS argument "fatally flawed," the Court pointed out that the issue of feasibility at two distinct points in the project review process: first in the EIR and second during project approval. At the first point, the selected alternatives must be "potentially feasible" to warrant inclusion in the EIR. At the second point, the decision-makers determine the ultimate feasibility of the alternatives.

In the words of the Court: "it does not subvert the CEQA environmental review process for the ultimate decision-maker to reject as infeasible the alternatives identified in the EIR." In this case, the City Council found the alternatives infeasible on policy grounds. This balancing of relevant economic, environmental, social, technological, and other considerations is allowed when determining the ultimate feasibility of alternatives. Put another way, alternatives may be rejected as infeasible if, based on substantial evidence in the record, the decision-makers find the alternatives are impractical or undesirable from a policy standpoint.

CEQA Procedure

***County of Sacramento v. The Superior Court of Sacramento County* (2009) 180 Cal.App.4th 943**

This is a procedural case revolving around the 90-day deadline for requesting a hearing on a CEQA case after filing a petition for writ. The plaintiff had apparently requested their hearing by telephone, and argued that Public Resources Code Section 21167.4(a) did not require a more formal request. The Court held that "although subdivision (a) of Section 21167.4 read in isolation, does not expressly require the filing of a written request for a hearing, the statute as a whole plainly does." Because the plaintiff didn't file a written request within the statutory timeframe, "its CEQA claims were subject to mandatory dismissal."

***Lake Almanor Associates v. Huffman-Broadway Group* (2009) 178 Cal.App. 4th 1194**

Lake Almanor Assoc. submitted an application for a 1,392-acre mixed use development to Plumas County for its consideration. The County contracted with Huffman-Broadway Group to prepare the requisite EIR, the cost of which would be reimbursed by Lake Almanor Assoc. The project application was submitted to the County in April 2005. Pursuant to CEQA, an agency has one year from the acceptance from a complete application within which to certify the EIR for the project. The County entered into its contract with Huffman-Broadway in July 2005, with mid-November 2005 as the deadline for submittal of an administrative draft EIR to the County.

Huffman-Broadway did not complete the administrative draft EIR by the contractural deadline, nor did they submit an acceptable administrative draft afterward, and the County terminated the contract. The County hired another consultant to complete the EIR. As a result, Lake Almanor Assoc. was required to reimburse the County for the costs of both Huffman-Broadway's work and that of the new EIR preparer.

Lake Almanor Assoc. brought suit against Huffman-Broadway seeking damages from the breach of the contract (as a third party beneficiary to the contract) and negligence. In addition, Lake Almanor Assoc. sought $50 million in damages due to the loss of the sale of the property to a third party resulting from the delay in completing the EIR. The trial court dismissed the case.

The Court of Appeal affirmed the dismissal. Lake Almanor Assoc. contends that it's a creditor beneficiary under the contract with the County because the County owed it a duty to complete the EIR in a timely fashion. The County's contract contained no language specifically disclaiming any duty to third parties. Nor did it contain any language that would hold the County liable to a third party. The Court distinguished Lake Almanor Assoc's references to COAC v. Kennedy Engineers (1977) 67 Cal.App.3e 916 [contractor held to be a third party beneficiary to a contract to complete an EIR between engineering firm and the water district for which a water treatment plant was being built by the contractor] and Sunset Drive Corp. v. City of Redlands (1999) 73 Cal.App.4th 215 [applicant can petition for a writ of mandate to force a public agency to comply with CEQA] from this case because COAC related to a project of the public agency for which the plaintiff was the contractor and Sunset Drive related to a writ for completion of the EIR, not a third party claim for damages against the EIR consultant. Further, there is no provision in CEQA authorizing an applicant to claim damages when an EIR is not completed on time. Finally, direct action against the EIR consultant is not consistent with CEQA policy of providing accurate information about the project to the public and decisionmakers. In the words of the Court:

> "Suits such as appellant's could undermine that goal by compromising the independence and objectivity of environmental consultants. In addition to reimbursement of amounts paid to the County for respondent's services and other alleged damages, appellant's complaint seeks $50 million in damages due to the loss of a sale of the project property to a third party. The exposure to potential claims of such magnitude, and even much smaller claims, could affect

> the availability of consultants and the fees they charge. This exposure would create incentives to complete the report that could undermine the analysis of the relevant environmental issues, creating a conflict between the consultant's duty to the public and its financial self-interest."

Regarding the claim of negligence, the Court could find no authority for Lake Almanor Assoc's theory that Huffman-Broadway's actions rose to negligence.

Summary of Key 2009 CEQA Legislation

By Terry Rivasplata of ICF Jones & Stokes

The following are summaries of the CEQA-related bills that were signed into law in 2009. All the signed legislation will take effect January 1, 2010. The texts of these bills and any Legislative committee analyses can be found at http://www.leginfo.ca.gov/bilinfo.html.

AB 1318 (Perez). This bill creates a new statutory exemption (Public Resources Code Section 21080(b)(16)) for selection, credit, and transfer of emission credits by the South Coast Air Quality Management District (SCAQMD) pursuant to Section 40440.14 of the Health and Safety Code, until January 1, 2012, unless Section 40440.14 of the Health and Safety expires later.

(Chapter 285, Statutes of 2009)

SB 605 (Ashburn). This bill (Public Resources Code Section 21080.23.5) adds biogas pipelines to the existing statutory exemption under CEQA for the construction, maintenance, and repair of hazardous materials pipelines of less than 8 miles in length. The exemption is limited to pipelines in Fresno, Kern, Kings, and Tulare Counties. This bill also defines the term "biogas." The impetus of this bill is to help dairy operators who have installed methane digesters as part of their manure management systems market the biogas that they are producing. This exemption expires by its own terms on January 1, 2013.

(Chapter 599, Statutes of 2009)

SB 827 (Wright). This bill adds Health & Safety Code Section 40440.13 to provide that, notwithstanding the decision in *Natural Resources Defense Council v. South Coast Air Quality Management District* (Super. Ct. Los Angeles County, 2007, No. BS 110792), the SCAQMD may issue permits in compliance with Rule 1304, as amended on June 14, 1996 (except for an electrical generation facility) and Rule 1309.1, as amended May 3, 2002, for essential public services.

Nothing in this statute affects the decision in the case as it concerns adoption, re-adoption, and environmental review of Rule 1315. The SCAQMD is to rely on the emission reduction credit tracking system used prior to the adoption of Rule 1315 until a new tracking system is approved by the U.S. EPA. This statute is repealed by its own terms on May 1, 2012.

The author noted that *Natural Resources Defense Council v. South Coast Air Quality Management District* has prohibited the SCAQMD from issuing "over a thousand pending permits that rely on the district's internal offset back to offset emissions." SB 827 is the product of a battle in the Legislature over the introduction of its major features as last-minute amendments on the last day of the 2009 session.

(Chapter 206, Statutes of 2009)

ABX3 81 (Hill). This bill of the Legislature's Third Extraordinary Session exempts from CEQA all activities related to a recently approved new stadium complex and associated development in the City of Industry. The purpose of the bill is to inoculate the approved stadium complex and associated development from challenges under CEQA and California Planning Law. In order to qualify for the exemption, the City would be required to find that:

- a supplemental EIR was certified for the project within five years of the effective date of this bill;
- a Metrolink station is located within ½ mile from the project site and associated development;

- the supplemental EIR for the stadium complex and associated development included an analysis of greenhouse gas emissions;
- and the conditions of approval or mitigation measures limit the number of events to be held at the stadium to not more than 45 per calendar year.

Notwithstanding the exemption, all mitigation measures contained in the mitigation monitoring and reporting program adopted for the project must be complied with. This bill also exempts the project from the usual requirement that it be consistent with the City's general plan.

(Chapter 30, Statutes of 2009-10 Third Extraordinary Session)

Changes made to CEQA in 2009

Section	Effect	Bill	Chapter	Effective
21080(b)(16)	Add	AB 1318	285	January 1, 2010
21080.23.5	Add	SB 605	599	January 1, 2010

Changes made to CEQA Guidelines in 2009

Appendix G	Amend	N/A	N/A	March 18, 2010
Appendix F	Amend	N/A	N/A	March 18, 2010

California Environmental Quality Act
California Public Resources Code
Division 13. Environmental Quality

Statute, as amended in 2009

[The 2009 revisions are shown as follows: new additions are <u>underline</u> and deltions are indicated by ~~strikeout~~.]

Chapter 1: Policy

§ 21000. LEGISLATIVE INTENT

The Legislature finds and declares as follows:

(a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

(b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.

(c) There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.

(d) The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.

(e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(f) The interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and concerted efforts by public and private interests to enhance environmental quality and to control environmental pollution.

(g) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.

§ 21001. ADDITIONAL LEGISLATIVE INTENT

The Legislature further finds and declares that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian, shall be the guiding criterion in public decisions.

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

§ 21001.1. REVIEW OF PUBLIC AGENCY PROJECTS

The Legislature further finds and declares that it is the policy of the state that projects to be carried out by public agencies be subject to the same level of review and consideration under this division as that of private projects required to be approved by public agencies.

§ 21002. APPROVAL OF PROJECTS; FEASIBLE ALTERNATIVE OR MITIGATION MEASURES

The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

§ 21002.1. USE OF ENVIRONMENTAL IMPACT REPORTS; POLICY

In order to achieve the objectives set forth in Section 21002, the Legislature hereby finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to this division:

(a) The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.

(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.

(c) If economic, social, or other conditions make it infeasible to mitigate one or more significant effects on the environment of a project, the project may nonetheless be carried out or approved at the discretion of a public agency if the project is otherwise permissible under applicable laws and regulations.

(d) In applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of the lead agency shall differ from that of a responsible agency. The lead agency shall be responsible for considering the effects, both individual and collective, of all activities involved in a project. A responsible agency shall be responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve. This subdivision applies only to decisions by a public agency to carry out or approve a project and does not otherwise affect the scope of the comments that the public agency may wish to make pursuant to Section 21104 or 21153.

(e) To provide more meaningful public disclosure, reduce the time and cost required to prepare an environmental impact report, and focus on potentially significant effects on the environment of a proposed project, lead agencies shall, in accordance with Section 21100, focus the discussion in the environmental impact report on those potential effects on the environment of a proposed project which the lead agency has determined are or may be significant. Lead agencies may limit discussion on other effects to a brief explanation as to why those effects are not potentially significant.

§ 21003. PLANNING AND ENVIRONMENTAL REVIEW PROCEDURES; DOCUMENTS; REPORTS; DATA BASE; ADMINISTRATION OF PROCESS

The Legislature further finds and declares that it is the policy of the state that:

(a) Local agencies integrate the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively.

(b) Documents prepared pursuant to this division be organized and written in a manner that will be meaningful and useful to decision makers and to the public.

(c) Environmental impact reports omit unnecessary descriptions of projects and emphasize feasible mitigation measures and feasible alternatives to projects.

(d) Information developed in individual environmental impact reports be incorporated into a data base which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.

(e) Information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations.

(f) All persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment.

§ 21003.1. ENVIRONMENTAL EFFECTS OF PROJECTS; COMMENTS FROM PUBLIC AND PUBLIC AGENCIES TO LEAD AGENCIES; AVAILABILITY OF INFORMATION

The Legislature further finds and declares it is the policy of the state that:

(a) Comments from the public and public agencies on the environmental effects of a project shall be made to lead agencies as soon as possible in the review of environmental documents, including, but not limited to, draft environmental impact reports and negative declarations, in order to allow the lead agencies to identify, at the earliest possible time in the environmental review process, potential significant effects of a project, alternatives, and mitigation measures which would substantially reduce the effects.

(b) Information relevant to the significant effects of a project, alternatives, and mitigation measures which substantially reduce the effects shall be made available as soon as possible by lead agencies, other public agencies, and interested persons and organizations.

(c) Nothing in subdivisions (a) or (b) reduces or otherwise limits public review or comment periods currently prescribed either by statute or in guidelines prepared and adopted pursuant to Section 21083 for environmental documents, including, but not limited to, draft environmental impact reports and negative declarations.

§ 21004. MITIGATING OR AVOIDING A SIGNIFICANT EFFECT; POWERS OF PUBLIC AGENCY

In mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than this division. However, a public agency may use discretionary powers provided by such other law for the purpose of mitigating or avoiding a significant effect on the environment subject to the express or implied constraints or limitations that may be provided by law.

§ 21005. INFORMATION DISCLOSURE PROVISIONS; NONCOMPLIANCE; PRESUMPTION; FINDINGS

(a) The Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of this division, may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.

(b) It is the intent of the Legislature that, in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall continue to follow the established principle that there is no presumption that error is prejudicial.

(c) It is further the intent of the Legislature that any court, which finds, or, in the process of reviewing a previous court finding, finds, that a public agency has taken an action without compliance with this division, shall specifically address each of the alleged grounds for noncompliance.

§ 21006. ISSUANCE OF PERMITS, LICENSES, CERTIFICATES OR OTHER ENTITLEMENTS; WAIVERS OF SOVEREIGN

The Legislature finds and declares that this division is an integral part of any public agency's decisionmaking process, including, but not limited to, the issuance of permits, licenses, certificates, or other entitlements required for activities undertaken pursuant to federal statutes containing specific waivers of sovereign immunity.

Chapter 2: Short Title

§ 21050. CITATION

This division shall be known and may be cited as the California Environmental Quality Act.

Chapter 2.5: Definitions

§ 21060. APPLICATION OF DEFINITIONS

Unless the context otherwise requires, the definitions in this chapter govern the construction of this division.

§ 21060.1. AGRICULTURAL LAND

(a) "Agricultural land" means prime farmland, farmland of statewide importance, or unique farmland, as defined by the United States Department of Agriculture land inventory and monitoring criteria, as modified for California.

(b) In those areas of the state where lands have not been surveyed for the classifications specified in subdivision (a), "agricultural land" means land that meets the requirements of "prime agricultural land" as defined in paragraph (1), (2), (3), or (4) of subdivision (c) of Section 51201 of the Government Code.

§ 21060.3. EMERGENCY

"Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

§ 21060.5. ENVIRONMENT

"Environment" means the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance.

§ 21061. ENVIRONMENTAL IMPACT REPORT

"Environmental impact report" means a detailed statement setting forth the matters specified in Sections 21100 and 21100.1; provided that information or data which is relevant to such a statement and is a matter of public record or is generally available to the public need not be repeated in its entirety in such statement, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the environmental impact report shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. An environmental impact report also includes any comments which are obtained pursuant to Section 21104 or 21153, or which are required to be obtained pursuant to this division.

An environmental impact report is an informational document which, when its preparation is required by this division, shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.

In order to facilitate the use of environmental impact reports, public agencies shall require that such reports contain an index or table of contents and a summary. Failure to include such index, table of contents, or summary shall not constitute a cause of action pursuant to Section 21167.

§ 21061.1. FEASIBLE

"Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

§ 21061.2. LAND EVALUATION AND SITE ASSESSMENT

"Land evaluation and site assessment" means a decision-making methodology for assessing the potential environmental impact of state and local projects on agricultural land.

§ 21061.3. INFILL SITE

"Infill site" means a site in an urbanized area that meets either of the following criteria:

(a) The site has not been previously developed for urban uses and both of the following apply:

(a1) The site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses.

(2) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.

(b) The site has been previously developed for qualified urban uses.

§ 21062. LOCAL AGENCY

"Local agency" means any public agency other than a state agency, board, or commission. For purposes of this division a redevelopment agency and a local agency formation commission are local agencies, and neither is a state agency, board, or commission.

§ 21063. PUBLIC AGENCY

"Public agency" includes any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision.

§ 21064. NEGATIVE DECLARATION

"Negative declaration" means a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report.

§ 21064.3. MAJOR TRANSIT STOP

"Major transit stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

§ 21064.5. MITIGATED NEGATIVE DECLARATION

"Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

§ 21065. PROJECT

"Project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

(a) An activity directly undertaken by any public agency.

(b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

§ 21065.3. PROJECT-SPECIFIC EFFECT

"Project-specific effect" means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects.

§ 21065.5. GEOTHERMAL EXPLORATORY PROJECT

"Geothermal exploratory project" means a project as defined in Section 21065 composed of not more than six wells and associated drilling and testing equipment, whose chief and original purpose is to evaluate the presence and characteristics of geothermal resources prior to commencement of a geothermal field development project as defined in Section 65928.5 of the Government Code. Wells included within a geothermal exploratory project must be located at least one-half mile from geothermal development wells which are capable of producing geothermal resources in commercial quantities.

§ 21066. PERSON

"Person" includes any person, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, county, city and county, city, town, the state, and any of the agencies and political subdivisions of those entities, and, to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions.

§ 21067. LEAD AGENCY

"Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.

§ 21068. SIGNIFICANT EFFECT ON THE ENVIRONMENT

"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in the environment.

§ 21068.5. TIERING OR TIER

"Tiering" or "tier" means the coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific environmental impact reports which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report.

§ 21069. RESPONSIBLE AGENCY

"Responsible agency" means a public agency, other than the lead agency, which has responsibility for carrying out or approving a project.

§ 21070. TRUSTEE AGENCY

"Trustee agency" means a state agency that has jurisdiction by law over natural resources affected by a project, that are held in trust for the people of the State of California.

§ 21071. URBANIZED AREA; DEFINITION

"Urbanized area" means either of the following:

(a) An incorporated city that meets either of the following criteria:

  (1) Has a population of at least 100,000 persons.

  (2) Has a population of less than 100,000 persons if the population of that city and not more than two contiguous incorporated cities combined equals at least 100,000 persons.

(b) An unincorporated area that satisfies the criteria in both paragraph (1) and (2) of the following criteria:

(1) Is either of the following:

(A) Completely surrounded by one or more incorporated cities, and both of the following criteria are met:

(i) The population of the unincorporated area and the population of the surrounding incorporated city or cities equals not less than 100,000 persons.

(ii) The population density of the unincorporated area at least equals the population density of the surrounding city or cities.

(B) Located within an urban growth boundary and has an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an "urban growth boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(2) The board of supervisors with jurisdiction over the unincorporated area has previously taken both of the following actions:

(A) Issued a finding that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that encourage compact development in a manner that does both of the following:

(i) Promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing.

(ii) Protects the environment, open space, and agricultural areas.

(B) Submitted a draft finding to the Office of Planning and Research at least 30 days prior to issuing a final finding, and allowed the office 30 days to submit comments on the draft findings to the board of supervisors.

§ 21072. QUALIFIED URBAN USE; DEFINITION

"Qualified urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

Chapter 2.6: General

§ 21080. DIVISION APPLICATION TO DISCRETIONARY PROJECTS; NONAPPLICATION; NEGATIVE DECLARATIONS; ENVIRONMENTAL IMPACT REPORT PREPARATION

(a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

(b) This division does not apply to any of the following activities:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report, negative declaration, or other document, prepared pursuant to a regulatory program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located if the environmental impact report, negative declaration, or document includes the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

(9) All classes of projects designated pursuant to Section 21084.

(10) A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.

(11) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.

(12) Facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

(13) A project for the development of a regional transportation improvement program, the state transportation improvement program, or a congestion management program prepared pursuant to Section 65089 of the Government Code.

(14) Any project or portion thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in this state are subject to this division.

(15) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5. Any site-specific effect of the project which was not analyzed as a significant effect on the environment in the plan or other written documentation required by Section 21080.5 is subject to this division.

(16) The selection, credit, and transfer of emission credits by the South Coast Air Quality Management District pursuant to Section 40440.14 of the Health and Safety Code, until the repeal of that section of January 1, 2012, or a later date.

(c) If a lead agency determines that a proposed project, not otherwise exempt from this division, would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:

(1) There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.

(2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.

(d) If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) (1) For the purposes of this section and this division, substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.

(2) Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

(f) As a result of the public review process for a mitigated negative declaration, including administrative decisions and public hearings, the lead agency may conclude that certain mitigation measures identified pursuant to paragraph (2) of subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the lead agency, prior to approving the project, may delete those mitigation measures and substitute for them other mitigation measures that the lead agency finds, after holding a public hearing on the matter, are equivalent or more effective in mitigating significant effects on the environment to a less than significant level and that do not cause any potentially significant effect on the environment. If those new mitigation measures are made conditions of project approval or are otherwise made part of the project approval, the deletion of the former measures and the substitution of the new mitigation measures shall not constitute an action or circumstance requiring recirculation of the mitigated negative declaration.

(g) Nothing in this section shall preclude a project applicant or any other person from challenging, in an administrative or judicial proceeding, the legality of a condition of project approval imposed by the lead agency. If, however, any condition of project approval set aside by either an administrative body or court was necessary to avoid or lessen the likelihood of the occurrence of a significant effect on the environment, the lead agency's approval of the negative declaration and project shall be invalid and a new environmental review process shall be conducted before the project can be reapproved, unless the lead agency substitutes a new condition that the lead agency finds, after holding a public hearing on the matter, is equivalent to, or more effective in, lessening or avoiding significant effects on the environment and that does not cause any potentially significant effect on the environment.

§ 21080.01. CALIFORNIA MEN'S COLONY WEST FACILITY IN SAN LUIS OBISPO COUNTY; INAPPLICABILITY OF DIVISION TO REOPENING AND OPERATION

This division shall not apply to any activity or approval necessary for the reopening and operation of the California Men's Colony West Facility in San Luis Obispo County.

§ 21080.02. KINGS COUNTY; VICINITY OF CORCORAN; NEW PRISON FACILITIES; APPLICATION OF DIVISION

This division shall not apply to any activity or approval necessary for or incidental to planning, design, site acquisition, construction, operation, or maintenance of the new prison facility at or in the vicinity of Corcoran in Kings County as authorized by the act that enacted this section.

§ 21080.03. KINGS AND AMADOR (IONE) COUNTIES; PRISONS; APPLICATION OF DIVISION

This division shall not apply to any activity or approval necessary for or incidental to the location, development, construction, operation, or maintenance of the prison in the County of Kings, authorized by Section 9 of Chapter 958 of the Statutes of 1983, as amended, and of the prison in the County of Amador (Ione), authorized by Chapter 957 of the Statutes of 1983, as amended.

§ 21080.04. ROCKTRAM-KRUG PASSENGER RAIL SERVICE PROJECT; APPLICATION OF DIVISION; LEAD AGENCY; LEGISLATIVE INTENT

(a) Notwithstanding paragraph (10) of subdivision (b) of Section 21080, this division applies to a project for the institution of passenger rail service on a line paralleling State Highway 29 and running from Rocktram to Krug in the Napa Valley. With respect to that project, and for the purposes of this division, the Public Utilities Commission is the lead agency.

(b) It is the intent of the Legislature in enacting this section to abrogate the decision of the California Supreme Court "that Section 21080, subdivision (b)(11), exempts Wine Train's institution of passenger service on the Rocktram-Krug line from the requirements of CEQA" in *Napa Valley Wine Train, Inc. v. Public Utilities Com.*, 50 Cal. 3d 370.

(c) Nothing in this section is intended to affect or apply to, or to confer jurisdiction upon the Public Utilities Commission with respect to, any other project involving rail service.

§ 21080.05. SAN FRANCISCO PENINSULA COMMUTE SERVICE PROJECT BETWEEN SAN FRANCISCO AND SAN JOSE; APPLICATION OF DIVISION

This division does not apply to a project by a public agency to lease or purchase the rail right-of-way used for the San Francisco Peninsula commute service between San Francisco and San Jose, together with all branch and spur lines, including the Dumbarton and Vasona lines.

§ 21080.07. RIVERSIDE AND DEL NORTE COUNTIES; PLANNING AND CONSTRUCTION OF NEW PRISON FACILITIES; APPLICATION OF DIVISION

This division shall not apply to any activity or approval necessary for or incidental to planning, design, site acquisition, construction, operation, or maintenance of the new prison facilities located in any of the following places:

(a) The County of Riverside.

(b) The County of Del Norte.

§ 21080.09. PUBLIC HIGHER EDUCATION; CAMPUS LOCATION; LONG-RANGE DEVELOPMENT PLANS

(a) For purposes of this section, the following definitions apply:

  (1) "Public higher education" has the same meaning as specified in Section 66010 of the Education Code.

(2) "Long range development plan" means a physical development and land use plan to meet the academic and institutional objectives for a particular campus or medical center of public higher education.

(b) The selection of a location for a particular campus and the approval of a long range development plan are subject to this division and require the preparation of an environmental impact report. Environmental effects relating to changes in enrollment levels shall be considered for each campus or medical center of public higher education in the environmental impact report prepared for the long range development plan for the campus or medical center.

(c) The approval of a project on a particular campus or medical center of public higher education is subject to this division and may be addressed, subject to the other provisions of this division, in a tiered environmental analysis based upon a long range development plan environmental impact report.

(d) Compliance with this section satisfies the obligations of public higher education pursuant to this division to consider the environmental impact of academic and enrollment plans as they affect campuses or medical centers, provided that any such plans shall become effective for a campus or medical center only after the environmental effects of those plans have been analyzed as required by this division in a long range development plan environmental impact report or tiered analysis based upon that environmental impact report for that campus or medical center, and addressed as required by this division.

§ 21080.1. ENVIRONMENTAL IMPACT REPORT OR NEGATIVE DECLARATION; DETERMINATION BY LEAD AGENCY; FINALITY; CONSULTATION

(a) The lead agency shall be responsible for determining whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for any project which is subject to this division. That determination shall be final and conclusive on all persons, including responsible agencies, unless challenged as provided in Section 21167.

(b) In the case of a project described in subdivision (c) of Section 21065, the lead agency shall, upon the request of a potential applicant, provide for consultation prior to the filing of the application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.

§ 21080.2. ISSUANCE OF LEASE, PERMIT, LICENSE, CERTIFICATE OR OTHER ENTITLEMENT; DETERMINATION BY LEAD AGENCY; TIME

In the case of a project described in subdivision (c) of Section 21065, the determination required by Section 21080.1 shall be made within 30 days from the date on which an application for a project has been received and accepted as complete by the lead agency. This period may be extended 15 days upon the consent of the lead agency and the project applicant.

§ 21080.3. CONSULTATION WITH RESPONSIBLE AGENCIES; ASSISTANCE BY OFFICE OF PLANNING AND RESEARCH

(a) Prior to determining whether a negative declaration or environmental impact report is required for a project, the lead agency shall consult with all responsible agencies and trustee agencies. Prior to that required consultation, the lead agency may informally contact any of those agencies.

(b) In order to expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies and trustee agencies, for a proposed project. In the case of a project described in subdivision (c) of Section 21065, the request may also be made by the project applicant.

§ 21080.4. ENVIRONMENTAL IMPACT REPORT; REQUIREMENT DETERMINED BY LEAD AGENCY; DUTIES OF RESPONSIBLE AGENCIES AND CERTAIN PUBLIC AGENCIES; CONSULTATION; ASSISTANCE BY OFFICE OF PLANNING AND RESEARCH

(a) If a lead agency determines that an environmental impact report is required for a project, the lead agency shall immediately send notice of that determination by certified mail or an equivalent procedure to each responsible agency, the Office of Planning and Research, and those public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California. Upon receipt of the notice, each responsible agency, the office, and each public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency, the office, or the public agency in connection with the proposed project and which, pursuant to the requirements of this division, shall be included in the environmental impact report. The information shall be specified in writing and shall be communicated to the lead agency by certified mail or equivalent procedure not later than 30 days after the date of receipt of the notice of the lead agency's determination. The lead agency shall request similar guidance from appropriate federal agencies.

(b) To expedite the requirements of subdivision (a), the lead agency, any responsible agency, the Office of Planning and Research, or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, may request one or more meetings between representatives of those agencies and the office for the purpose of assisting the lead agency to determine the scope and content of the environmental information that any of those responsible agencies, the office, or the public agencies may require. In the case of a project described in subdivision (c) of Section 21065, the request may also be made by the project applicant. The meetings shall be convened by the lead agency as soon as possible, but not later than 30 days after the date that the meeting was requested.

(c) To expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies, public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, and any federal agencies that have responsibility for carrying out or approving a proposed project. In the case of a project described in subdivision (c) of Section 21065, that request may also be made by the project applicant.

(d) With respect to the Department of Transportation, and with respect to any state agency that is a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, subject to the requirements of subdivision (a), the Office of Planning and Research shall ensure that the information required by subdivision (a) is transmitted to the lead agency, and that affected agencies are notified regarding meetings to be held upon request pursuant to subdivision (b), within the required time period.

§ 21080.5. PLAN OR OTHER WRITTEN DOCUMENTATION; SUBMISSION IN LIEU OF IMPACT REPORT; REGULATORY PROGRAMS; CRITERIA; CERTIFICATION; PROPOSED CHANGES; REVIEW; COMMENCEMENT OF ACTIONS; STATE AGENCIES

(a) Except as provided in Section 21158.1, when the regulatory program of a state agency requires a plan or other written documentation containing environmental information and complying with paragraph (3) of subdivision (d) to be submitted in support of any activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the

environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.

(b) This section applies only to regulatory programs or portions thereof that involve either of the following:

(1) The issuance to a person of a lease, permit, license, certificate, or other entitlement for use.

(2) The adoption or approval of standards, rules, regulations, or plans for use in the regulatory program.

(c) A regulatory program certified pursuant to this section is exempt from Chapter 3 (commencing with Section 21100), Chapter 4 (commencing with Section 21150), and Section 21167, except as provided in Article 2 (commencing with Section 21157) of Chapter 4.5.

(d) To qualify for certification pursuant to this section, a regulatory program shall require the utilization of an interdisciplinary approach that will ensure the integrated use of the natural and social sciences in decision making and that shall meet all of the following criteria:

(1) The enabling legislation of the regulatory program does both of the following:

(A) Includes protection of the environment among its principal purposes.

(B) Contains authority for the administering agency to adopt rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation.

(2) The rules and regulations adopted by the administering agency for the regulatory program do all of the following:

(A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment.

(B) Include guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program.

(C) Require the administering agency to consult with all public agencies that have jurisdiction, by law, with respect to the proposed activity.

(D) Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process.

(E) Require the filing of a notice of the decision by the administering agency on the proposed activity with the Secretary of the Resources Agency. Those notices shall be available for public inspection, and a list of the notices shall be posted on a weekly basis in the Office of the Resources Agency. Each list shall remain posted for a period of 30 days.

(F) Require notice of the filing of the plan or other written documentation to be made to the public and to any person who requests, in writing, notification. The notification shall be made in a manner that will provide the public or any person requesting notification with sufficient time to review and comment on the filing.

(3) The plan or other written documentation required by the regulatory program does both of the following:

(A) Includes a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity.

(B) Is available for a reasonable time for review and comment by other public agencies and the general public.

(e) (1) The Secretary of the Resources Agency shall certify a regulatory program that the secretary determines meets all the qualifications for certification set forth in this section, and withdraw certification on determination that the regulatory program has been altered so that it no longer meets those qualifications. Certification and withdrawal of certification shall occur only after compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) In determining whether or not a regulatory program meets the qualifications for certification set forth in this section, the inquiry of the secretary shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The inquiry shall not extend to individual decisions to be reached under the regulatory program, including the nature of specific alternatives or mitigation measures that might be proposed to lessen any significant adverse effect on the environment of the activity.

(3) If the secretary determines that the regulatory program submitted for certification does not meet the qualifications for certification set forth in this section, the secretary shall adopt findings setting forth the reasons for the determination.

(f) After a regulatory program has been certified pursuant to this section, a proposed change in the program that could affect compliance with the qualifications for certification specified in subdivision (d) may be submitted to the Secretary of the Resources Agency for review and comment. The scope of the secretary's review shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The review may not extend to individual decisions to be reached under the regulatory program, including specific alternatives or mitigation measures that might be proposed to lessen any significant adverse effect on the environment of the activity. The secretary shall have 30 days from the date of receipt of the proposed change to notify the state agency whether the proposed change will alter the regulatory program so that it no longer meets the qualification for certification established in this section and will result in a withdrawal of certification as provided in this section.

(g) An action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency approving or adopting a proposed activity under a regulatory program that has been certified pursuant to this section on the basis that the plan or other written documentation prepared pursuant to paragraph (3) of subdivision (d) does not comply with this section shall be commenced not later than 30 days from the date of the filing of notice of the approval or adoption of the activity.

(h) (1) An action or proceeding to attack, review, set aside, void, or annul a determination of the Secretary of the Resources Agency to certify a regulatory program pursuant to this section on the basis that the regulatory program does not comply with this section shall be commenced within 30 days from the date of certification by the secretary.

(2) In an action brought pursuant to paragraph (1), the inquiry shall extend only to whether there was a prejudicial abuse of discretion by the secretary. Abuse of discretion is established if the secretary has not proceeded in a manner required by law or if the determination is not supported by substantial evidence.

(i) For purposes of this section, a county agricultural commissioner is a state agency.

(j) For purposes of this section, an air quality management district or air pollution control district is a state agency, except that the approval, if any, by a district of a nonattainment area plan is subject to this section only if, and to the extent that, the approval adopts or amends rules or regulations.

(k) (1) The secretary, by July 1, 2004, shall develop a protocol for reviewing the prospective application of certified regulatory programs to evaluate the consistency of those programs with the requirements of this division. Following the completion of the development of the protocol, the secretary shall provide a report to the Senate Committee on Environmental

Quality and the Assembly Committee on Natural Resources regarding the need for a grant of additional statutory authority authorizing the secretary to undertake a review of the certified regulatory programs.

(2) The secretary shall provide a significant opportunity for public participation in developing the protocol described in paragraph (1) including, but not limited to, at least two public meetings with interested parties. A notice of each meeting shall be provided at least 10 days prior to the meeting to any person who files a written request for a notice with the agency.

§ 21080.8. APPLICATION OF DIVISION; CONVERSION OF EXISTING RENTAL MOBILEHOME PARK TO RESIDENT INITIATED SUBDIVISION, COOPERATIVE, CONDOMINIUM FOR MOBILEHOMES

This division does not apply to the conversion of an existing rental mobilehome park to a resident initiated subdivision, cooperative, or condominium for mobilehomes if the conversion will not result in an expansion of or change in existing use of the property.

§ 21080.9. LOCAL COASTAL PROGRAMS OR LONG-RANGE LAND USE DEVELOPMENT; UNIVERSITY OR GOVERNMENTAL ACTIVITIES AND APPROVALS; APPLICATION OF DIVISION

This division shall not apply to activities and approvals by any local government, as defined in Section 30109, or any state university or college, as defined in Section 30119, as necessary for the preparation and adoption of a local coastal program or long-range land use development plan pursuant to Division 20 (commencing with Section 30000); provided, however, that certification of a local coastal program or long-range land use development plan by the California Coastal Commission pursuant to Chapter 6 (commencing with Section 30500) of Division 20 shall be subject to the requirements of this division. For the purpose of Section 21080.5, a certified local coastal program or long-range land use development plan constitutes a plan for use in the California Coastal Commission's regulatory program.

§ 21080.10. APPLICATION OF DIVISION; GENERAL PLANS; LOW- OR MODERATE- INCOME OR RESIDENTIAL HOUSING; AGRICULTURAL EMPLOYEE HOUSING

This division does not apply to any of the following:

(a) An extension of time, granted pursuant to Section 65361 of the Government Code, for the preparation and adoption of one or more elements of a city or county general plan.

(b) Actions taken by the Department of Housing and Community Development or the California Housing Finance Agency to provide financial assistance or insurance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, if the project that is the subject of the application for financial assistance or insurance will be reviewed pursuant to this division by another public agency.

§ 21080.11. APPLICATION OF DIVISION; SETTLEMENTS BY STATE LANDS COMMISSION

This division shall not apply to settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements.

§ 21080.12. APPLICATION OF DIVISION; REPAIR OF CRITICAL LEVEES

(a) This division does not apply to the repair of critical levees of the State Plan for Flood Control specified pursuant to Section 8361 of the Water Code within an existing levee footprint to meet standards of public health and safety funded pursuant to Section 5096.821, except as otherwise provided in Section 15300.2 of Title 14 of the California Code of Regulations.

(b) For purposes of undertaking urgent levee repairs, the lead agency shall do all of the following:

(1) Conduct outreach efforts in the vicinity of the project to ensure public awareness of the proposed repair work prior to approval of the project.

(2) To the extent feasible, comply with standard construction practices, including, but not limited to, any rules, guidelines, or regulations adopted by the applicable air district for construction equipment and for control of particulate matter emissions.

(3) To the extent feasible, use equipment powered by emulsified diesel fuel, electricity, natural gas, or ultralow sulfur diesel as an alternative to conventional diesel-powered construction equipment.

(c) This section shall remain in effect only until July 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2016, deletes or extends that date.

§ 21080.13. RAILROAD GRADE SEPARATION PROJECTS; APPLICATION OF DIVISION

This division shall not apply to any railroad grade separation project which eliminates an existing grade crossing or which reconstructs an existing grade separation.

§ 21080.14. APPLICATION OF DIVISION TO SEISMIC RETROFIT PROJECTS FOR EXISTING HIGHWAY FACILITIES

(a) The following seismic retrofit projects, as defined by the Department of Transportation's directive dated May 4, 2006, for the structural modification of an existing highway structure or the replacement of a highway structure by a newly constructed highway structure, with substantially the same purpose and capacity as the existing structure, within an existing right-of-way, or immediately adjacent right-of-way, shall be exempt from this division:

(1) The I-880 Fifth Avenue Overhead in Alameda County.

(2) The I-880 High Street Separation Overhead in Alameda County.

(3) The SR 101 Hollister Avenue Overcrossing in Santa Barbara County.

(4) The Schuyler Heim Bridge in Los Angeles County.

(5) The Mojave River Bridge on SR 18 in San Bernardino County.

(b) For a project specified in subdivision (a), the Department of Transportation shall do all of the following:

(1) Conduct outreach efforts in the vicinity of the project to ensure public awareness of the proposed repair work prior to approval of the seismic retrofit project.

(2) To the extent feasible, comply with standard construction practices, including, but not limited to, any rules, guidelines, or regulations adopted by the applicable air district for construction equipment.

(3) Comply with measures for control of particulate matter emissions recommended by the applicable air district.

(4) To the extent feasible, use equipment powered by emulsified diesel fuel, electricity, natural gas, or ultralow sulfur diesel as an alternative to conventional diesel-powered construction equipment.

(c) This section shall remain in effect only until the date that the Director of Transportation certifies to the Secretary of Business, Transportation and Housing that all construction activities for the seismic retrofit projects specified in subdivision (a) are complete, or until June 30, 2010, whichever occurs first, and as of that date is repealed.

§ 21080.16. APPLICATION OF DIVISION TO SEISMIC RETROFIT PROJECTS FOR EXISTING LOCAL BRIDGES

(a) This division does not apply to a seismic retrofit project on an existing local bridge, except as otherwise provided in Section 15300.2 of Title 14 of the California Code of Regulations, that is identified pursuant to Section 179.1 of the Streets and Highways Code.

(b) For purposes of undertaking the seismic retrofit project, the lead agency shall do all of the following:

(1) Conduct outreach efforts in the vicinity of the project to ensure public awareness of the proposed project prior to approval of the project.

(2) To the extent feasible, comply with standard construction practices, including, but not limited to, any rules, guidelines, or regulations adopted by the applicable air district for construction equipment and for control of particulate matter emissions.

(3) To the extent feasible, use equipment powered by emulsified diesel fuel, electricity, natural gas, or ultralow sulfur diesel as an alternative to conventional diesel-powered construction equipment.

(c) For purposes of this section an "existing local bridge" means a bridge that is located on a local street or highway.

(d) For purposes of this section a "seismic retrofit project" means a project urgently needed to bring a dangerous and unsafe bridge up to contemporary seismic standards and retaining the same purposes, capacity, and location as the existing bridge.

(e) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, this is enacted before January 1, 2011, deletes or extends that date.

§ 21080.17. APPLICATION OF DIVISION TO ORDINANCES IMPLEMENTING LAW RELATING TO CONSTRUCTION OF DWELLING UNITS AND SECOND UNITS

This division does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code.

§ 21080.18. APPLICATION OF DIVISION TO CLOSING OF PUBLIC SCHOOL MAINTAINING KINDERGARTEN OR ANY OF GRADES 1 THROUGH 12

This division does not apply to the closing of any public school in which kindergarten or any of grades 1 through 12 is maintained or the transfer of students from that public school to another school if the only physical changes involved are categorically exempt under Chapter 3 (commencing with Section 15000) of Division 6 of Title 14 of the California Administrative Code.

§ 21080.19. RESTRIPING OF STREETS OR HIGHWAYS; APPLICATION OF DIVISION

This division does not apply to a project for restriping of streets or highways to relieve traffic congestion.

§ 21080.21. APPLICATION OF DIVISION TO PUBLIC RIGHT-OF-WAY PIPELINE PROJECTS LESS THAN ONE MILE IN LENGTH

This division does not apply to any project of less than one mile in length within a public street or highway or any other public right-of-way for the installation of a new pipeline or the maintenance, repair, restoration, reconditioning, relocation, replacement, removal, or demolition of an existing pipeline. For purposes of this section, "pipeline" includes subsurface facilities but does not include any surface facility related to the operation of the underground facility.

§ 21080.22. LOCAL GOVERNMENTS; PREPARATION OF GENERAL PLAN AMENDMENTS; APPLICATION OF DIVISION

(a) This division does not apply to activities and approvals by a local government necessary for the preparation of general plan amendments pursuant to Section 29763, except that the approval of general plan amendments by the Delta Protection Commission is subject to the requirements of this division.

(b) For purposes of Section 21080.5, a general plan amendment is a plan required by the regulatory program of the Delta Protection Commission.

§ 21080.23. PIPELINE PROJECTS; APPLICATION OF DIVISION

(a) This division does not apply to any project which consists of the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing pipeline, as defined in subdivision (a) of Section 51010.5 of the Government Code, or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline, if the project meets all of the following conditions:

(1) (A) The project is less than eight miles in length.

(B) Notwithstanding subparagraph (A), actual construction and excavation activities undertaken to achieve the maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing pipeline are not undertaken over a length of more than one-half mile at any one time.

(2) The project consists of a section of pipeline that is not less than eight miles from any section of pipeline that has been subject to an exemption pursuant to this section in the past 12 months.

(3) The project is not solely for the purpose of excavating soil that is contaminated by hazardous materials, and, to the extent not otherwise expressly required by law, the party undertaking the project immediately informs the lead agency of the discovery of contaminated soil.

(4) To the extent not otherwise expressly required by law, the person undertaking the project has, in advance of undertaking the project, prepared a plan that will result in notification of the appropriate agencies so that they may take action, if determined to be necessary, to provide for the emergency evacuation of members of the public who may be located in close proximity to the project.

(5) Project activities are undertaken within an existing right-of-way and the right-of-way is restored to its condition prior to the project.

(6) The project applicant agrees to comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and to otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.

(b) If a project meets all of the requirements of subdivision (a), the person undertaking the project shall do all of the following:

(1) Notify, in writing, any affected public agency, including, but not limited to, any public agency having permit, land use, environmental, public health protection, or emergency response authority of the exemption of the project from this division by subdivision (a).

(2) Provide notice to the public in the affected area in a manner consistent with paragraph (3) of subdivision (b) of Section 21092.

(3) In the case of private rights-of-way over private property, receive from the underlying property owner permission for access to the property.

(4) Comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.

(c) Prior to January 1, 1999, this section shall not apply to ARCO Pipeline Company's crude oil pipelines designated as Crude Oil Line 1, from Tejon Station south to its terminus, and Crude Oil Line 90.

(d) This section does not apply to either of the following:

(1) A project in which the diameter of the pipeline is increased.

(2) A project undertaken within the boundaries of an oil refinery.

§ 21080.23.5. PIPELINE; BIOGAS; APPLICATION OF DIVISION

(a) For purposes of Section 21080.23, "pipeline" also means a pipeline located in Fresno, Kern, Kings, or Tulare County, that is used to transport biogas, and meeting the requirements of Section 21080.23 and all local, state, and federal laws.

(b) For purposes of this section, "biogas" means natural gas that meets the requirements of Section 2292.5 of Title 13 of the California Code of Regulations and is derived from anaerobic digestion of dairy animal waste.

(c) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

§ 21080.24. PERMITS; ISSUANCE, MODIFICATION, AMENDMENT, OR RENEWAL; APPLICATION OF LAW

(a) This division does not apply to the issuance, modification, amendment, or renewal of a permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section 39053.3 of the Health and Safety Code, or pursuant to a district Title V program established pursuant to Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or facility.

(b) Nothing in this section is intended to result in the application of this division to a physical or operational change that, prior to January 1, 1995, was not subject to this division.

§ 21080.26. FLUORIDATION; APPLICATION OF DIVISION; MINOR ALTERATIONS

This division does not apply to minor alterations to utilities made for the purposes of complying with Sections 4026.7 and 4026.8 of the Health and Safety Code or regulations adopted thereunder.

§ 21080.29. LA PLAYA PROJECT; APPLICATION OF DIVISION

(a) A project located in Los Angeles County that is approved by a public agency before the effective date of the act adding this section is not in violation of any requirement of this division by reason of the failure to construct a roadway across the property transferred to the state pursuant to subdivision (c) and to construct a bridge over the adjacent Ballona Channel in Los Angeles County, otherwise required as a mitigation measure pursuant to this division, if all of the following conditions apply:

(1) The improvements specified in this subdivision are not constructed, due in whole or in part, to the project owner's or developer's relinquishment of easement rights to construct those improvements.

(2) The easement rights in paragraph (1) are relinquished in connection with the State of California, acting by and through the Wildlife Conservation Board of the Department of Fish and Game, acquiring a wetlands project that is a minimum of 400 acres in size and located within the coastal zone.

(b) Where those easement rights have been relinquished, any municipal ordinance or regulation adopted by a charter city or a general law city shall be inapplicable to the extent that the ordinance or regulation requires construction of the transportation improvements specified in subdivision (a), or would otherwise require reprocessing or resubmittal of a permit or approval, including, but not limited to, a final recorded map, a vesting tentative map, or a tentative map, as a result of the transportation improvements specified in subdivision (a) not being constructed.

(c) (1) If the Wildlife Conservation Board of the Department of Fish and Game acquires property within the coastal zone that is a minimum of 400 acres in size pursuant to a purchase and sale agreement with Playa Capital Company, LLC, the Controller shall direct the trustee under the Amendment to Declaration of Trust entered into on or about December 11, 1984, by First Nationwide Savings, as trustee, Summa Corporation, as trustor, and the Controller, as beneficiary, known as the HRH Inheritance Tax Security Trust, to convey title to the trust estate of the trust, including real property commonly known as Playa Vista Area C, to the State of California acting by and through the Wildlife Conservation Board of the Department of Fish and Game for conservation, restoration, or recreation purposes only, with the right to transfer the property for those uses to any other agency of the State of California.

(2) This subdivision shall constitute the enabling legislation required by the Amendment to Declaration of Trust to empower the Controller to direct the trustee to convey title to the trust estate under the HRH Inheritance Tax Security Trust to the State of California or an agency thereof.

(3) The conveyance of the trust estate to the Wildlife Conservation Board pursuant to this subdivision shall supersede any duty or obligation imposed upon the Controller under the Probate Code or the Revenue and Taxation Code with respect to the disposition or application of the net proceeds of the trust estate.

§ 21080.32. EXEMPTION OF SPECIFIED ACTIONS BY PUBLICLY OWNED TRANSIT AGENCIES; IMPLEMENTATION OF BUDGET REDUCTIONS

(a) This section shall only apply to publicly owned transit agencies, but shall not apply to any publicly owned transit agency created pursuant to Section 130050.2 of the Public Utilities Code.

(b) Except as provided in subdivision (c), and in accordance with subdivision (d), this division does not apply to actions taken on or after July 1, 1995, by a publicly owned transit agency to implement budget reductions caused by the failure of agency revenues to adequately fund agency programs and facilities.

(c) This section does not apply to any action to reduce or eliminate a transit service, facility, program, or activity that was approved or adopted as a mitigation measure in any environmental document authorized by this division or the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.) or to any state or federal requirement that is imposed for the protection of the environment.

(d) (1) This section applies only to actions taken after the publicly owned transit agency has made a finding that there is a fiscal emergency caused by the failure of agency revenues to

adequately fund agency programs and facilities, and after the publicly owned transit agency has held a public hearing to consider those actions. A publicly owned transit agency that has held such a hearing shall respond within 30 days at a regular public meeting to suggestions made by the public at the initial public hearing. Those actions shall be limited to projects defined in subdivision (a) or (b) of Section 21065 which initiate or increase fees, rates, or charges charged for any existing public service, program, or activity; or reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity.

(2) For purposes of this subdivision, "fiscal emergency," when applied to a publicly owned transit agency, means that the agency is projected to have negative working capital within one year from the date that the agency makes the finding that there is a fiscal emergency pursuant to this section. Working capital shall be determined by adding together all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable and then subtracting unrestricted accounts payable. Employee retirement funds, including Internal Revenue Code Section 457 deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, workers' compensation reserves, and insurance reserves, shall not be factored into the formula for working capital.

§ 21080.33. EMERGENCY PROJECTS TO MAINTAIN, REPAIR OR RESTORE EXISTING HIGHWAYS; APPLICATION OF DIVISION; EXCEPTIONS

This division does not apply to any emergency project undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This section does not exempt from this division any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

§ 21080.35. CARRYING OUT OR APPROVING A PROJECT; DEFINITION

For the purposes of Section 21069, the phrase "carrying out or approving a project" shall include the carrying out or approval of a plan for a project that expands or enlarges an existing publicly owned airport by any political subdivision, as described in Section 21661.6 of the Public Utilities Code.

§ 21081. NECESSARY FINDINGS WHERE ENVIRONMENTAL IMPACT REPORT IDENTIFIES EFFECTS

Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers,

make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

§ 21081.2 EXCEPTION TO FINDINGS FOR INFILL RESIDENTIAL PROJECTS

(a) Except as provided in subdivision (c), if a residential project, not exceeding 100 units, with a minimum residential density of 20 units per acre and within one-half mile of a transit stop, on an infill site in an urbanized area is in compliance with the traffic, circulation, and transportation policies of the general plan, applicable community plan, applicable specific plan, and applicable ordinances of the city or county with jurisdiction over the area where the project is located, and the city or county requires that the mitigation measures approved in a previously certified project area environmental impact report applicable to the project be incorporated into the project, the city or county is not required to comply with subdivision (a) of Section 21081 with respect to the making of any findings regarding the impacts of the project on traffic at intersections, or on streets, highways, or freeways.

(b) Nothing in subdivision (a) restricts the authority of a city or county to adopt feasible mitigation measures with respect to the impacts of a project on pedestrian and bicycle safety.

(c) Subdivision (a) does not apply in any of the following circumstances:

(1) The application for a proposed project is made more than five years after certification of the project area environmental impact report applicable to the project.

(2) A major change has occurred within the project area after certification of the project area environmental impact report applicable to the project.

(3) The project area environmental impact report applicable to the project was certified with overriding considerations pursuant to subdivision (b) of Section 21081 to the significant impacts on the environment with respect to traffic or transportation.

(4) The proposed project covers more than four acres.

(d) A project shall not be divided into smaller projects in order to qualify pursuant to this section.

(e) Nothing in this section relieves a city or county from the requirement to analyze the project's effects on traffic at intersections, or on streets, highways, or freeways, or from making a determination that the project may have a significant effect on traffic.

(f) For the purposes of this section, “project area environmental impact report“ means an environmental impact report certified on any of the following:

(1) A general plan.

(2) A revision or update to the general plan that includes at least the land use and circulation elements.

(3) An applicable community plan.

(4) An applicable specific plan.

(5) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(6) A zoning ordinance.

§ 21081.5. FEASIBILITY OF MITIGATION MEASURES OR PROJECT ALTERNATIVES; BASIS FOR FINDINGS

In making the findings required by paragraph (3) of subdivision (a) of Section 21081, the public agency shall base its findings on substantial evidence in the record.

§ 21081.6. FINDINGS OR NEGATIVE DECLARATIONS; REPORTING OR MONITORING PROJECT CHANGES; EFFECT ON ENVIRONMENT; CONDITIONS

(a) When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

§ 21081.7. TRANSPORTATION INFORMATION; SUBMISSION OF REPORT TO TRANSPORTATION PLANNING AGENCY

Transportation information resulting from the reporting or monitoring program required to be adopted by a public agency pursuant to Section 21081.6 shall be submitted to the transportation planning agency in the region where the project is located and to the Department of Transportation for a project of statewide, regional, or areawide significance according to criteria developed pursuant to Section 21083. The transportation planning agency and the Department of Transportation shall adopt guidelines for the submittal of those reporting or monitoring programs.

§ 21082. PUBLIC AGENCIES; ADOPTION OF OBJECTIVES, CRITERIA AND PROCEDURES; CONSISTENCY WITH GUIDELINES

All public agencies shall adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports and negative declarations pursuant to this division. A school district, or any other district, whose boundaries are coterminous with a city, county, or city and county, may utilize the objectives, criteria, and procedures of the city, county, or city and county, as may be applicable, in which case, the school district or other district need not adopt objectives, criteria, and procedures of its own. The objectives, criteria, and procedures shall be consistent with the provisions of this division and with the guidelines adopted by the Secretary of the Resources Agency pursuant to Section 21083. Such objectives, criteria, and procedures shall be adopted by each public agency no later than 60 days after the Secretary of the Resources Agency has adopted guidelines pursuant to Section 21083.

§ 21082.1. DRAFT ENVIRONMENTAL IMPACT REPORT, ENVIRONMENTAL IMPACT REPORT, OR NEGATIVE DECLARATION; PREPARATION BY PUBLIC AGENCY

(a) Any draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration prepared pursuant to the requirements of this division shall be prepared directly by, or under contract to, a public agency.

(b) This section is not intended to prohibit, and shall not be construed as prohibiting, any person from submitting information or other comments to the public agency responsible for preparing an environmental impact report, draft environmental impact report, negative declaration, or mitigated negative declaration. The information or other comments may be submitted in any format, shall be considered by the public agency, and may be included, in whole or in part, in any report or declaration.

(c) The lead agency shall do all of the following:

(1) Independently review and analyze any report or declaration required by this division.

(2) Circulate draft documents that reflect its independent judgment.

(3) As part of the adoption of a negative declaration or a mitigated negative declaration, or certification of an environmental impact report, find that the report or declaration reflects the independent judgment of the lead agency.

(4) Submit a sufficient number of copies of the draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration, and a copy of the report or declaration in an electronic form as required by the guidelines adopted pursuant to Section 21083, to the State Clearinghouse for review and comment by state agencies, if any of the following apply:

(A) A state agency is any of the following:

(i) The lead agency.

(ii) A responsible agency.

(iii) A trustee agency.

(B) A state agency otherwise has jurisdiction by law with respect to the project.

(C) The proposed project is of sufficient statewide, regional, or areawide environmental significance as determined pursuant to the guidelines certified and adopted pursuant to Section 21083.

§ 21082.2. SIGNIFICANT EFFECT ON ENVIRONMENT; DETERMINATION; ENVIRONMENTAL IMPACT REPORT PREPARATION

(a) The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record.

(b) The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.

(c) Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

(d) If there is substantial evidence, in light of the whole record before the lead agency, that a project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) Statements in an environmental impact report and comments with respect to an environmental impact report shall not be deemed determinative of whether the project may have a significant effect on the environment.

§ 21083. OFFICE OF PLANNING AND RESEARCH; PREPARATION AND DEVELOPMENT OF GUIDELINES; CONDITIONS

(a) The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.

(b) The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment." The criteria shall require a finding that a project may have a "significant effect on the environment" if one or more of the following conditions exist:

  (1) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

  (2) The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

  (3) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

(c) The guidelines shall include procedures for determining the lead agency pursuant to Section 21165.

(d) The guidelines shall include criteria for public agencies to use in determining when a proposed project is of sufficient statewide, regional, or areawide environmental significance that a draft environmental impact report, a proposed negative declaration, or a proposed mitigated negative declaration shall be submitted to appropriate state agencies, through the State Clearinghouse, for review and comment prior to completion of the environmental impact report, negative declaration, or mitigated negative declaration.

(e) The Office of Planning and Research shall develop and prepare the proposed guidelines as soon as possible and shall transmit them immediately to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt the guidelines pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, the guidelines shall not be adopted without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

(f) The Office of Planning and Research shall, at least once every two years, review the guidelines adopted pursuant to this section and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt guidelines, and any amendments thereto, at least once every two years, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, guidelines may not be adopted or amended without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

§ 21083.05.

(a) On or before July 1, 2009, the Office of Planning and Research shall prepare, develop, and transmit to the Resources Agency guidelines for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions as required by this division, including, but not limited to, effects associated with transportation or energy consumption.

(b) On or before January 1, 2010, the Resources Agency shall certify and adopt guidelines prepared and developed by the Office of Planning and Research pursuant to subdivision (a).

(c) The Office of Planning and Research and the Resources Agency shall periodically update the guidelines to incorporate new information or criteria established by the State Air Resources Board pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

§ 21083.1. LEGISLATIVE INTENT; INTERPRETATION BY COURTS

It is the intent of the Legislature that courts, consistent with generally accepted rules of statutory interpretation, shall not interpret this division or the state guidelines adopted pursuant to Section 21083 in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines.

§ 21083.2. ARCHAEOLOGICAL RESOURCES; DETERMINATION OF EFFECT OF PROJECT; EIR OR NEGATIVE DECLARATION; MITIGATION MEASURES

(a) As part of the determination made pursuant to Section 21080.1, the lead agency shall determine whether the project may have a significant effect on archaeological resources. If the lead agency determines that the project may have a significant effect on unique archaeological resources, the environmental impact report shall address the issue of those resources. An environmental impact report, if otherwise necessary, shall not address the issue of nonunique archaeological resources. A negative declaration shall be issued with respect to a project if, but for the issue of nonunique archaeological resources, the negative declaration would be otherwise issued.

(b) If it can be demonstrated that a project will cause damage to a unique archaeological resource, the lead agency may require reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state. Examples of that treatment, in no order of preference, may include, but are not limited to, any of the following:

(1) Planning construction to avoid archaeological sites.

(2) Deeding archaeological sites into permanent conservation easements.

(3) Capping or covering archaeological sites with a layer of soil before building on the sites.

(4) Planning parks, greenspace, or other open space to incorporate archaeological sites.

(c) To the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision. The project applicant shall provide a guarantee to the lead agency to pay one-half the estimated cost of mitigating the significant effects of the project on unique archaeological resources. In determining payment, the lead agency shall give due consideration to the in-kind value of project design or expenditures that are intended to permit any or all archaeological resources or California Native American culturally significant sites to be preserved in place or left in an undisturbed state. When a final decision is made to carry out or approve the project, the lead agency shall, if necessary, reduce the specified mitigation measures to those which can be funded with the money guaranteed by the project applicant plus the money voluntarily guaranteed by any other person or persons for those mitigation purposes. In order to allow time for interested persons to provide the funding guarantee referred to in this subdivision, a final decision to carry out or approve a project shall not occur sooner than 60 days after completion of the recommended special environmental impact report required by this section.

(d) Excavation as mitigation shall be restricted to those parts of the unique archaeological resource that would be damaged or destroyed by the project. Excavation as mitigation shall not be required for a unique archaeological resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the resource, if this determination is documented in the environmental impact report.

(e) In no event shall the amount paid by a project applicant for mitigation measures required pursuant to subdivision (c) exceed the following amounts:

(1) An amount equal to one-half of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a commercial or industrial project.

(2) An amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a housing project consisting of a single unit.

(3) If a housing project consists of more than a single unit, an amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of the project for the first unit plus the sum of the following:

(A) Two hundred dollars ($200) per unit for any of the next 99 units.

(B) One hundred fifty dollars ($150) per unit for any of the next 400 units.

(C) One hundred dollars ($100) per unit in excess of 500 units.

(f) Unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after final approval necessary to implement the physical development of the project or, if a phased project, in connection with the phased portion to which the specific mitigation measures are applicable. However, the project applicant may extend that period if he or she so elects. Nothing in this section shall nullify protections for Indian cemeteries under any other provision of law.

(g) As used in this section, “unique archaeological resource“ means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

(1) Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.

(2) Has a special and particular quality such as being the oldest of its type or the best available example of its type.

(3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.

(h) As used in this section, "nonunique archaeological resource" means an archaeological artifact, object, or site which does not meet the criteria in subdivision (g). A nonunique archaeological resource need be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects.

(i) As part of the objectives, criteria, and procedures required by Section 21082 or as part of conditions imposed for mitigation, a lead agency may make provisions for archaeological sites accidentally discovered during construction. These provisions may include an immediate evaluation of the find. If the find is determined to be a unique archaeological resource, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures may be required under the provisions set forth in this section. Construction work may continue on other parts of the building site while archaeological mitigation takes place.

(j) This section does not apply to any project described in subdivision (a) or (b) of Section 21065 if the lead agency elects to comply with all other applicable provisions of this division. This section does not apply to any project described in subdivision (c) of Section 21065 if the applicant and the lead agency jointly elect to comply with all other applicable provisions of this division.

(k) Any additional costs to any local agency as a result of complying with this section with respect to a project of other than a public agency shall be borne by the project applicant.

(l) Nothing in this section is intended to affect or modify the requirements of Section 21084 or 21084.1.

§ 21083.3. APPLICATION OF DIVISION TO APPROVAL OF SUBDIVISION MAP OR OTHER PROJECT; LIMITATION; MITIGATION MEASURES UNDER PRIOR ENVIRONMENTAL IMPACT REPORT; PUBLIC HEARING; FINDING

(a) If a parcel has been zoned to accommodate a particular density of development or has been designated in a community plan to accommodate a particular density of development and an environmental impact report was certified for that zoning or planning action, the application of this division to the approval of any subdivision map or other project that is consistent with the zoning or community plan shall be limited to effects upon the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report.

(b) If a development project is consistent with the general plan of a local agency and an environmental impact report was certified with respect to that general plan, the application of this division to the approval of that development project shall be limited to effects on the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report.

(c) Nothing in this section affects any requirement to analyze potentially significant offsite impacts and cumulative impacts of the project not discussed in the prior environmental impact report with respect to the general plan. However, all public agencies with authority to mitigate the significant effects shall undertake or require the undertaking of any feasible mitigation measures specified in the prior environmental impact report relevant to a significant effect

which the project will have on the environment or, if not, then the provisions of this section shall have no application to that effect. The lead agency shall make a finding, at a public hearing, as to whether those mitigation measures will be undertaken.

(d) An effect of a project upon the environment shall not be considered peculiar to the parcel or to the project, for purposes of this section, if uniformly applied development policies or standards have been previously adopted by the city or county, with a finding based upon substantial evidence, which need not include an environmental impact report, that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.

(e) Where a community plan is the basis for application of this section, any rezoning action consistent with the community plan shall be a project subject to exemption from this division in accordance with this section. As used in this section, "community plan" means a part of the general plan of a city or county which (1) applies to a defined geographic portion of the total area included in the general plan, (2) complies with Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code by including or referencing each of the mandatory elements specified in Section 65302 of the Government Code, and (3) contains specific development policies adopted for the area included in the community plan and identifies measures to implement those policies, so that the policies which will apply to each parcel can be determined.

(f) No person shall have standing to bring an action or proceeding to attack, review, set aside, void, or annul a finding of a public agency made at a public hearing pursuant to subdivision (a) with respect to the conformity of the project to the mitigation measures identified in the prior environmental impact report for the zoning or planning action, unless he or she has participated in that public hearing. However, this subdivision shall not be applicable if the local agency failed to give public notice of the hearing as required by law. For purposes of this subdivision, a person has participated in the public hearing if he or she has either submitted oral or written testimony regarding the proposed determination, finding, or decision prior to the close of the hearing.

(g) Any community plan adopted prior to January 1, 1982, which does not comply with the definitional criteria specified in subdivision (e) may be amended to comply with that criteria, in which case the plan shall be deemed a "community plan" within the meaning of subdivision (e) if (1) an environmental impact report was certified for adoption of the plan, and (2) at the time of the conforming amendment, the environmental impact report has not been held inadequate by a court of this state and is not the subject of pending litigation challenging its adequacy.

§ 21083.4. COUNTIES; CONVERSION OF OAK WOODLANDS; MITIGATION ALTERNATIVES; OAK WOODLANDS CONSERVATION ACT GRANT USE; EXEMPTIONS

(a) For purposes of this section, "oak" means a native tree species in the genus Quercus, not designated as Group A or Group B commercial species pursuant to regulations adopted by the State Board of Forestry and Fire Protection pursuant to Section 4526, and that is 5 inches or more in diameter at breast height.

(b) As part of the determination made pursuant to Section 21080.1, a county shall determine whether a project within its jurisdiction may result in a conversion of oak woodlands that will have a significant effect on the environment. If a county determines that there may be a significant effect to oak woodlands, the county shall require one or more of the following oak woodlands mitigation alternatives to mitigate the significant effect of the conversion of oak woodlands:

(1) Conserve oak woodlands, through the use of conservation easements.

(2) (A) Plant an appropriate number of trees, including maintaining plantings and replacing dead or diseased trees.

(B) The requirement to maintain trees pursuant to this paragraph terminates seven years after the trees are planted.

(C) Mitigation pursuant to this paragraph shall not fulfill more than one-half of the mitigation requirement for the project.

(D) The requirements imposed pursuant to this paragraph also may be used to restore former oak woodlands.

(3) Contribute funds to the Oak Woodlands Conservation Fund, as established under subdivision (a) of Section 1363 of the Fish and Game Code, for the purpose of purchasing oak woodlands conservation easements, as specified under paragraph (1) of subdivision (d) of that section and the guidelines and criteria of the Wildlife Conservation Board. A project applicant that contributes funds under this paragraph shall not receive a grant from the Oak Woodlands Conservation Fund as part of the mitigation for the project.

(4) Other mitigation measures developed by the county.

(c) Notwithstanding subdivision (d) of Section 1363 of the Fish and Game Code, a county may use a grant awarded pursuant to the Oak Woodlands Conservation Act (Article 3.5 (commencing with Section 1360) of Chapter 4 of Division 2 of the Fish and Game Code) to prepare an oak conservation element for a general plan, an oak protection ordinance, or an oak woodlands management plan, or amendments thereto, that meets the requirements of this section.

(d) The following are exempt from this section:

(1) Projects undertaken pursuant to an approved Natural Community Conservation Plan or approved subarea plan within an approved Natural Community Conservation Plan that includes oaks as a covered species or that conserves oak habitat through natural community conservation preserve designation and implementation and mitigation measures that are consistent with this section.

(2) Affordable housing projects for lower income households, as defined pursuant to Section 50079.5 of the Health and Safety Code, that are located within an urbanized area, or within a sphere of influence as defined pursuant to Section 56076 of the Government Code.

(3) Conversion of oak woodlands on agricultural land that includes land that is used to produce or process plant and animal products for commercial purposes.

(4) Projects undertaken pursuant to Section 21080.5 of the Public Resources Code.

(e) (1) A lead agency that adopts, and a project that incorporates, one or more of the measures specified in this section to mitigate the significant effects to oaks and oak woodlands shall be deemed to be in compliance with this division only as it applies to effects on oaks and oak woodlands.

(2) The Legislature does not intend this section to modify requirements of this division, other than with regard to effects on oaks and oak woodlands.

(f) This section does not preclude the application of Section 21081 to a project.

(g) This section, and the regulations adopted pursuant to this section, shall not be construed as a limitation on the power of a public agency to comply with this division or any other provision of law.

§ 21083.5. ENVIRONMENTAL IMPACT STATEMENT OR REPORT; SUBMISSION IN LIEU OF IMPACT REPORT; COMPLIANCE BY ADOPTION OF TAHOE REGIONAL PLAN; PUBLIC REVIEW AND NOTICE REQUIREMENTS

(a) The guidelines prepared and adopted pursuant to Section 21083 shall provide that, when an environmental impact statement has been, or will be, prepared for the same project pursuant to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) and implementing regulations, or an environmental impact report has been, or will be, prepared for the same project pursuant to the requirements of the Tahoe Regional Planning Compact (Section 66801 of the Government Code) and implementing regulations, all or any part of that statement or report may be submitted in lieu of all or any part of an environmental impact report required by this division, if that statement or report, or the part which is used, complies with the requirements of this division and the guidelines adopted pursuant thereto.

(b) Notwithstanding subdivision (a), compliance with this division may be achieved for the adoption in a city or county general plan, without any additions or change, of all or any part of the regional plan prepared pursuant to the Tahoe Regional Planning Compact and implementing regulations by reviewing environmental documents prepared by the Tahoe Regional Planning Agency addressing the plan, providing an analysis pursuant to this division of any significant effect on the environment not addressed in the environmental documents, and proceeding in accordance with Section 21081. This subdivision does not exempt a city or county from complying with the public review and notice requirements of this division.

§ 21083.6. COMBINED ENVIRONMENTAL IMPACT REPORT AND STATEMENT; TIME LIMITS

In the event that a project requires both an environmental impact report prepared pursuant to the requirements of this division and an environmental impact statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969, an applicant may request and the lead agency may waive the time limits established pursuant to Section 21100.2 or 21151.5 if it finds that additional time is required to prepare a combined environmental impact report-environmental impact statement and that the time required to prepare such a combined document would be shorter than that required to prepare each document separately.

§ 21083.7. USE OF IMPACT STATEMENT AS THE IMPACT REPORT; CONSULTATIONS

(a) In the event that a project requires both an environmental impact report prepared pursuant to the requirements of this division and an environmental impact statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969, the lead agency shall, whenever possible, use the environmental impact statement as such environmental impact report as provided in Section 21083.5.

(b) In order to implement this section, each lead agency to which this section is applicable shall do both of the following, as soon as possible:

  (1) Consult with the federal agency required to prepare such environmental impact statement.

  (2) Notify the federal agency required to prepare the environmental impact statement regarding any scoping meeting for the proposed project.

§ 21083.8.1. REUSE PLANS

(a) (1) For purposes of this section, “reuse plan“ for a military base means an initial plan for the reuse of a military base adopted by a local government or a redevelopment agency in the form of a general plan, general plan amendment, specific plan, redevelopment plan, or other planning document, except that the reuse plan shall also consist of a statement of development policies, include a diagram or diagrams illustrating its provisions, and make the designation required in paragraph (2). “Military base” or “base” means a military base or

reservation either closed or realigned by, or scheduled for closure or realignment by, the federal government.

(2) The reuse plan shall designate the proposed general distribution and general location of development intensity for housing, business, industry, open space, recreation, natural resources, public buildings and grounds, roads and other transportation facilities, infrastructure, and other categories of public and private uses of land.

(b) (1) When preparing and certifying an environmental impact report for a reuse plan, including when utilizing an environmental impact statement pursuant to Section 21083.5, the determination of whether the reuse plan may have a significant effect on the environment may be made in the context of the physical conditions that were present at the time that the federal decision became final for the closure or realignment of the base. The no project alternative analyzed in the environmental impact report shall discuss the existing conditions on the base, as they exist at the time that the environmental impact report is prepared, as well as what could be reasonably expected to occur in the foreseeable future if the reuse plan were not approved, based on current plans and consistent with available infrastructure and services.

(2) For purposes of this division, all public and private activities taken pursuant to, or in furtherance of, a reuse plan shall be deemed to be a single project. However, further environmental review of any such public or private activity shall be conducted if any of the events specified in Section 21166 have occurred.

(c) Prior to preparing an environmental impact report for which a lead agency chooses to utilize the provisions of this section, the lead agency shall do all of the following:

(A) Hold a public hearing at which is discussed the federal environmental impact statement prepared for, or in the process of being prepared for, the closure of the military base. The discussion shall include the significant effects on the environment examined in the environmental impact statement, potential methods of mitigating those effects, including feasible alternatives, and the mitigative effects of federal, state, and local laws applicable to future nonmilitary activities. Prior to the close of the hearing, the lead agency may specify the baseline conditions for the reuse plan environmental impact report prepared, or in the process of being prepared, for the closure of the base. The lead agency may specify particular physical conditions that it will examine in greater detail than were examined in the environmental impact statement. Notice of the hearing shall be given as provided in Section 21092. The hearing may be continued from time to time.

(B) Identify pertinent responsible agencies and trustee agencies and consult with those agencies prior to the public hearing as to the application of their regulatory policies and permitting standards to the proposed baseline for environmental analysis, as well as to the reuse plan and planned future nonmilitary land uses of the base. The affected agencies shall have not less than 30 days prior to the public hearing to review the proposed reuse plan and to submit their comments to the lead agency.

(C) At the close of the hearing, the lead agency shall state in writing how the lead agency intends to integrate the baseline for analysis with the reuse planning and environmental review process, taking into account the adopted environmental standards of the community, including, but not limited to, the applicable general plan, specific plan, and redevelopment plan, and including other applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, integrated waste management plans, and county hazardous waste management plans.

(D) At the close of the hearing, the lead agency shall state, in writing, the specific economic or social reasons, including, but not limited to, new job creation, opportunities for

employment of skilled workers, availability of low- and moderate-income housing, and economic continuity, which support the selection of the baseline.

(d) (1) Nothing in this section shall in any way limit the scope of a review or determination of significance of the presence of hazardous or toxic wastes, substances, or materials including, but not limited to, contaminated soils and groundwater, nor shall the regulation of hazardous or toxic wastes, substances, or materials be constrained by prior levels of activity that existed at the time that the federal agency decision to close the military base became final.

(2) This section does not apply to any project undertaken pursuant to Chapter 6.5 (commencing with Section 25100) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of the Health and Safety Code, or pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(3) This section may apply to any reuse plan environmental impact report for which a notice of preparation pursuant to subdivision (a) of Section 21092 is issued within one year from the date that the federal record of decision was rendered for the military base closure or realignment and reuse, or prior to January 1, 1997, whichever is later, if the environmental impact report is completed and certified within five years from the date that the federal record of decision was rendered.

(e) All subsequent development at the military base shall be subject to all applicable federal, state, or local laws, including, but not limited to, those relating to air quality, water quality, traffic, threatened and endangered species, noise, and hazardous or toxic wastes, substances, or materials.

§ 21083.9. SCOPING MEETINGS

(a) Notwithstanding Section 21080.4, 21104, or 21153, a lead agency shall call at least one scoping meeting for either of the following:

(1) A proposed project that may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the department. The lead agency shall call the scoping meeting as soon as possible, but not later than 30 days after receiving the request from the Department of Transportation.

(2) A project of statewide, regional, or areawide significance.

(b) The lead agency shall provide notice of at least one scoping meeting held pursuant to paragraph (2) of subdivision (a) to all of the following:

(1) A county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and the county or city.

(2) A responsible agency.

(3) A public agency that has jurisdiction by law with respect to the project.

(4) An organization or individual who has filed a written request for the notice.

(c) For an~~y~~ entity, organization, or individual that is required to be provided notice of a lead agency public meeting, the requirement for notice of a scoping meeting pursuant to subdivision (b) may be met by including the notice of a scoping meeting in the public meeting notice.

(d) A scoping meeting that is held in the city or county within which the project is located pursuant to the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.) and the regulations adopted pursuant to that act shall be deemed to satisfy the requirement that a scoping meeting be held for a project subject to paragraph (2) of subdivision (a) if the lead agency meets the notice requirements of subdivision (b) or subdivision (c).

§ 21084. LIST OF EXEMPT CLASSES OF PROJECTS; PROJECTS DAMAGING SCENIC RESOURCES

(a) The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from this division. In adopting the guidelines, the Secretary of the Resources Agency shall make a finding that the listed classes of projects referred to in this section do not have a significant effect on the environment.

(b) No project which may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway designated as an official state scenic highway, pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, shall be exempted from this division pursuant to subdivision (a). This subdivision does not apply to improvements as mitigation for a project for which a negative declaration has been approved or an environmental impact report has been certified.

(c) No project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code shall be exempted from this division pursuant to subdivision (a).

(d) The changes made to this section by Chapter 1212 of the Statutes of 1991 apply only to projects for which applications have not been deemed complete on or before January 1, 1992, pursuant to Section 65943 of the Government Code.

(e) No project that may cause a substantial adverse change in the significance of an historical resource, as specified in Section 21084.1, shall be exempted from this division pursuant to subdivision (a).

§ 21084.1. HISTORICAL RESOURCE; SUBSTANTIAL ADVERSE CHANGE

A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources, as defined in subdivision (k) of Section 5020.1, or deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1, are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources, not included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 shall not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section.

§ 21085.7. [DELETED]

§ 21086. ADDITION OR DELETION OF EXEMPT CLASSES OF PROJECTS; PROCEDURE

(a) A public agency may, at any time, request the addition or deletion of a class of projects, to the list designated pursuant to Section 21084. That request shall be made in writing to the Office of Planning and Research and shall include information supporting the public agency's position that the class of projects does, or does not, have a significant effect on the environment.

(b) The Office of Planning and Research shall review each request and, as soon as possible, shall submit its recommendation to the Secretary of the Resources Agency. Following the receipt of that recommendation, the Secretary of the Resources Agency may add or delete the class of projects to the list of classes of projects designated pursuant to Section 21084 that are exempt from the requirements of this division.

(c) The addition or deletion of a class of projects, as provided in this section, to the list specified in Section 21084 shall constitute an amendment to the guidelines adopted pursuant to Section 21083 and shall be adopted in the manner prescribed in Sections 21083 and 21084.

§ 21088. DISTRIBUTION OF GUIDELINES, AMENDMENTS AND CHANGES; NOTICE

The Secretary of the Resources Agency shall provide for the timely distribution to all public agencies of the guidelines and any amendments or changes thereto. In addition, the Secretary of the Resources Agency may provide for publication of a bulletin to provide public notice of the guidelines, or any amendments or changes thereto, and of the completion of environmental impact reports prepared in compliance with this division.

§ 21089. FEES

(a) A lead agency may charge and collect a reasonable fee from any person proposing a project subject to this division in order to recover the estimated costs incurred by the lead agency in preparing a negative declaration or an environmental impact report for the project and for procedures necessary to comply with this division on the project. Litigation expenses, costs, and fees incurred in actions alleging noncompliance with this division under Section 21167 are not recoverable under this section.

(b) The Department of Fish and Game may charge and collect filing fees, as provided in Section 711.4 of the Fish and Game Code. Notwithstanding Section 21080.1, a finding required under Section 21081, or any project approved under a certified regulatory program authorized pursuant to Section 21080.5 is not operative, vested, or final until the filing fees required pursuant to Section 711.4 of the Fish and Game Code are paid.

§ 21090. REDEVELOPMENT PLAN DEEMED SINGLE PROJECT

(a) An environmental impact report for a redevelopment plan may be a master environmental impact report, program environmental impact report, or a project environmental impact report. Any environmental impact report for a redevelopment plan shall specify the type of environmental impact report that is prepared for the redevelopment plan.

(b) If the environmental impact report for a redevelopment plan is a project environmental impact report, all public and private activities or undertakings pursuant to, or in furtherance of, a redevelopment plan shall be deemed to be a single project. However, further environmental review of any public or private activity or undertaking pursuant to, or in furtherance of, a redevelopment plan for which a project environmental impact report has been certified shall be conducted if any of the events specified in Section 21166 have occurred.

§ 21090.1. GEOTHERMAL EXPLORATORY PROJECT DEEMED SEPARATE AND DISTINCT FROM FIELD DEVELOPMENT PROJECT

For all purposes of this division, a geothermal exploratory project shall be deemed to be separate and distinct from any subsequent geothermal field development project as defined in Section 65928.5 of the Government Code.

§ 21091. DRAFT ENVIRONMENTAL IMPACT REPORTS AND NEGATIVE DECLARATIONS; REVIEW PERIODS

(a) The public review period for a draft environmental impact report may not be less than 30 days. If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

(b) The public review period for a proposed negative declaration or proposed mitigated negative declaration may not be less than 20 days. If the proposed negative declaration or proposed

mitigated negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

(c) (1) Notwithstanding subdivisions (a) and (b), if a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration is submitted to the State Clearinghouse for review and the period of review by the State Clearinghouse is longer than the public review period established pursuant to subdivision (a) or (b), whichever is applicable, the public review period shall be at least as long as the period of review and comment by state agencies as established by the State Clearinghouse.

(2) The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state agency review period shall be the date that the State Clearinghouse distributes the document to state agencies.

(3) If the submittal of a CEQA document is determined by the State Clearinghouse to be complete, the State Clearinghouse shall distribute the document within three working days from the date of receipt. The State Clearinghouse shall specify the information that will be required in order to determine the completeness of the submittal of a CEQA document.

(d) (1) The lead agency shall consider comments it receives on a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration if those comments are received within the public review period.

(2) (A) With respect to the consideration of comments received on a draft environmental impact report, the lead agency shall evaluate comments on environmental issues that are received from persons who have reviewed the draft and shall prepare a written response pursuant to subparagraph (B). The lead agency may also respond to comments that are received after the close of the public review period.

(B) The written response shall describe the disposition of each significant environmental issue that is raised by commenters. The responses shall be prepared consistent with Section 15088 of Title 14 of the California Code of Regulations, as those regulations existed on June 1, 1993.

(3) (A) With respect to the consideration of comments received on a draft environmental impact report, proposed negative declaration, proposed mitigated negative declaration, or notice pursuant to Section 21080.4, the lead agency shall accept comments via e-mail and shall treat e-mail comments as equivalent to written comments.

(B) Any law or regulation relating to written comments received on a draft environmental impact report, proposed negative declaration, proposed mitigated negative declaration, or notice received pursuant to Section 21080.4, shall also apply to e-mail comments received for those reasons.

(e) (1) Criteria for shorter review periods by the State Clearinghouse for documents that must be submitted to the State Clearinghouse shall be set forth in the written guidelines issued by the Office of Planning and Research and made available to the public.

(2) Those shortened review periods may not be less than 30 days for a draft environmental impact report and 20 days for a negative declaration.

(3) A request for a shortened review period shall only be made in writing by the decision-making body of the lead agency to the Office of Planning and Research. The decision-making body may designate by resolution or ordinance a person authorized to request a shortened review period. A designated person shall notify the decision-making body of this request.

(4) A request approved by the State Clearinghouse shall be consistent with the criteria set forth in the written guidelines of the Office of Planning and Research .

(5) A shortened review period may not be approved by the Office of Planning and Research for a proposed project of statewide, regional, or areawide environmental significance as determined pursuant to Section 21083.

(6) An approval of a shortened review period shall be given prior to, and reflected in, the public notice required pursuant to Section 21092.

(f) Prior to carrying out or approving a project for which a negative declaration has been adopted, the lead agency shall consider the negative declaration together with comments that were received and considered pursuant to paragraph (1) of subdivision (d).

§ 21091.5. PUBLIC REVIEW PERIOD FOR DRAFT ENVIRONMENTAL IMPACT REPORT; PUBLICLY OWNED AIRPORTS

Notwithstanding subdivision (a) of Section 21091, or any other provision of this division, the public review period for a draft environmental impact report prepared for a proposed project involving the expansion or enlargement of a publicly owned airport requiring the acquisition of any tide and submerged lands or other lands subject to the public trust for commerce, navigation, or fisheries, or any interest therein, shall be not less than 120 days.

§ 21092. PUBLIC NOTICE OF PREPARATION OF ENVIRONMENTAL IMPACT REPORT OR NEGATIVE DECLARATION; PUBLICATION

(a) Any lead agency that is preparing an environmental impact report or a negative declaration or making a determination pursuant to subdivision (c) of Section 21157.1 shall provide public notice of that fact within a reasonable period of time prior to certification of the environmental impact report, or adoption of the negative declaration, or making the determination pursuant to subdivision (c) of Section 21157.1.

(b) (1) The notice shall specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review.

(2) This section shall not be construed in any manner that results in the invalidation of an action because of the alleged inadequacy of the notice content, provided that there has been substantial compliance with the notice content requirements of this section.

(3) The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice and shall also be given by at least one of the following procedures:

(A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice by the lead agency on- and off-site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(c) For any project involving the burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, meeting the qualifications of subdivision (d), notice shall be given to all organizations and individuals who have previously requested notice and

shall also be given by at least the procedures specified in subparagraphs (A), (B), and (C) of paragraph (3) of subdivision (b). In addition, notification shall be given by direct mailing to the owners and occupants of property within one-fourth of a mile of any parcel or parcels on which is located a project subject to this subdivision. This subdivision does not apply to any project for which notice has already been provided as of July 14, 1989, in compliance with this section as it existed prior to July 14, 1989.

(d) The notice requirements of subdivision (c) apply to both of the following:

(1) The construction of a new facility.

(2) The expansion of an existing facility which burns hazardous waste which would increase its permitted capacity by more than 10 percent. For purposes of this paragraph, the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(A) The facility capacity approved in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(B) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(e) The notice requirements specified in subdivision (b) or (c) shall not preclude a public agency from providing additional notice by other means if the agency so desires, or from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

§ 21092.1. ADDITION OF NEW INFORMATION; NOTICE AND CONSULTATION

When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.

§ 21092.2. REQUESTS FOR CERTAIN NOTICES

The notices required pursuant to Sections 21080.4, 21083.9, 21092, 21108, and 21152 shall be mailed to every person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, the director of the agency. If the agency offers to provide the notices by e-mail, upon filing a written request for notices, a person may request that the notices be provided to him or her by e-mail. The request may also be filed with any other person designated by the governing body or director to receive these requests. The agency may require requests for notices to be annually renewed. The public agency may charge a fee, except to other public agencies, that is reasonably related to the costs of providing this service. This section may not be construed in any manner that results in the invalidation of an action because of the failure of a person to receive a requested notice, provided that there has been substantial compliance with the requirements of this section.

§ 21092.3. POSTING OF CERTAIN NOTICES

The notices required pursuant to Sections 21080.4 and 21092 for an environmental impact report shall be posted in the office of the county clerk of each county in which the project will be located and shall remain posted for a period of 30 days. The notice required pursuant to Section 21092 for a

negative declaration shall be so posted for a period of 20 days, unless otherwise required by law to be posted for 30 days. The county clerk shall post the notices within 24 hours of receipt.

§ 21092.4. CONSULTATION WITH TRANSPORTATION PLANNING AGENCIES AND PUBLIC AGENCIES

(a) For a project of statewide, regional, or areawide significance, the lead agency shall consult with transportation planning agencies and public agencies that have transportation facilities within their jurisdictions that could be affected by the project. Consultation shall be conducted in the same manner as for responsible agencies pursuant to this division, and shall be for the purpose of the lead agency obtaining information concerning the project's effect on major local arterials, public transit, freeways, highways, overpasses, on-ramps, off-ramps, and rail transit service within the jurisdiction of a transportation planning agency or a public agency that is consulted by the lead agency. A transportation planning agency or public agency that provides information to the lead agency shall be notified of, and provided with copies of, environmental documents pertaining to the project.

(b) As used in this section, "transportation facilities" includes major local arterials and public transit within five miles of the project site and freeways, highways, overpasses, on-ramps, off-ramps, and rail transit service within 10 miles of the project site.

§ 21092.5. PROPOSED RESPONSE TO PUBLIC AGENCY COMMENTS RECEIVED BY LEAD AGENCY; NOTICE TO AGENCY COMMENTING ON NEGATIVE DECLARATION; UNTIMELY COMMENTS

(a) At least 10 days prior to certifying an environmental impact report, the lead agency shall provide a written proposed response to a public agency on comments made by that agency which conform with the requirements of this division. Proposed responses shall conform with the legal standards established for responses to comments on draft environmental impact reports. Copies of responses or the environmental document in which they are contained, prepared in conformance with other requirements of this division and the guidelines adopted pursuant to Section 21083, may be used to meet the requirements imposed by this section.

(b) The lead agency shall notify any public agency which comments on a negative declaration, of the public hearing or hearings, if any, on the project for which the negative declaration was prepared. If notice to the commenting public agency is provided pursuant to Section 21092, the notice shall satisfy the requirement of this subdivision.

(c) Nothing in this section requires the lead agency to respond to comments not received within the comment periods specified in this division, to reopen comment periods, or to delay acting on a negative declaration or environmental impact report.

§ 21092.6. APPLICATION OF GOVT. C. § 65962.5; DUTIES OF LEAD AGENCY; NOTICE BY ENVIRONMENTAL PROTECTION AGENCY OF FAILURE TO SPECIFY

(a) The lead agency shall consult the lists compiled pursuant to Section 65962.5 of the Government Code to determine whether the project and any alternatives are located on a site which is included on any list. The lead agency shall indicate whether a site is on any list not already identified by the applicant. The lead agency shall specify the list and include the information in the statement required pursuant to subdivision (f) of Section 65962.5 of the Government Code, in the notice required pursuant to Section 21080.4, a negative declaration, and a draft environmental impact report. The requirement in this section to specify any list shall not be construed to limit compliance with this division.

(b) If a project or any alternatives are located on a site which is included on any of the lists compiled pursuant to Section 65962.5 of the Government Code and the lead agency did not accurately specify or did not specify any list pursuant to subdivision (a), the California

Environmental Protection Agency shall notify the lead agency specifying any list with the site when it receives notice pursuant to Section 21080.4, a negative declaration, and a draft environmental impact report. The California Environmental Protection Agency shall not be liable for failure to notify the lead agency pursuant to this subdivision.

(c) This section applies only to projects for which applications have not been deemed complete pursuant to Section 65943 of the Government Code on or before January 1, 1992.

§ 21093. LEGISLATIVE FINDINGS AND DECLARATION; PUBLIC AGENCIES MAY TIER ENVIRONMENTAL IMPACT REPORTS

(a) The Legislature finds and declares that tiering of environmental impact reports will promote construction of needed housing and other development projects by (1) streamlining regulatory procedures, (2) avoiding repetitive discussions of the same issues in successive environmental impact reports, and (3) ensuring that environmental impact reports prepared for later projects which are consistent with a previously approved policy, plan, program, or ordinance concentrate upon environmental effects which may be mitigated or avoided in connection with the decision on each later project. The Legislature further finds and declares that tiering is appropriate when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous environmental impact reports.

(b) To achieve this purpose, environmental impact reports shall be tiered whenever feasible, as determined by the lead agency.

§ 21094. LATER PROJECTS; TIERED ENVIRONMENTAL IMPACT REPORTS; INITIAL STUDY; USE OF PRIOR REPORTS

(a) Where a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report, except that the report on the later project need not examine those effects which the lead agency determines were either (1) mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report, or (2) examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(b) This section applies only to a later project which the lead agency determines (1) is consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified, (2) is consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located, and (3) is not subject to Section 21166.

(c) For purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.

(d) All public agencies which propose to carry out or approve the later project may utilize the prior environmental impact report and the environmental impact report on the later project to fulfill the requirements of Section 21081.

(e) When tiering is used pursuant to this section, an environmental impact report prepared for a later project shall refer to the prior environmental impact report and state where a copy of the prior environmental impact report may be examined.

§ 21095. AMENDMENT TO STATE GUIDELINES TO PROVIDE OPTIONAL METHODOLOGY TO EVALUATE ENVIRONMENTAL EFFECTS OF AGRICULTURAL LAND CONVERSIONS

(a) The Resources Agency, in consultation with the Office of Planning and Research, shall develop an amendment to Appendix G of the state guidelines, for adoption pursuant to Section 21083, to provide lead agencies an optional methodology to ensure that significant effects on the environment of agricultural land conversions are quantitatively and consistently considered in the environmental review process.

(b) The Department of Conservation, in consultation with the United States Department of Agriculture pursuant to Section 658.6 of Title 7 of the Code of Federal Regulations, and in consultation with the Resources Agency and the Office of Planning and Research, shall develop a state model land evaluation and site assessment system, contingent upon the availability of funding from non-General Fund sources. The department shall seek funding for that purpose from non-General Fund sources, including, but not limited to, the United States Department of Agriculture.

(c) In lieu of developing an amendment to Appendix G of the state guidelines pursuant to subdivision (a), the Resources Agency may adopt the state model land evaluation and site assessment system developed pursuant to subdivision (b) as that amendment to Appendix G.

§ 21096. AIRPORT-RELATED SAFETY HAZARDS AND NOISE PROBLEMS; PROJECTS WITHIN AIRPORT COMPREHENSIVE LAND USE PLAN BOUNDARIES OR WITHIN TWO NAUTICAL MILES OF AIRPORT; PREPARATION OF ENVIRONMENTAL IMPACT REPORTS

(a) If a lead agency prepares an environmental impact report for a project situated within airport land use compatibility plan boundaries, or, if an airport land use compatibility plan has not been adopted, for a project within two nautical miles of a public airport or public use airport, the Airport Land Use Planning Handbook published by the Division of Aeronautics of the Department of Transportation, in compliance with Section 21674.5 of the Public Utilities Code and other documents, shall be utilized as technical resources to assist in the preparation of the environmental impact report as the report relates to airport-related safety hazards and noise problems.

(b) A lead agency shall not adopt a negative declaration for a project described in subdivision (a) unless the lead agency considers whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

§ 21097. GREENHOUSE GAS EMISSIONS ANALYSIS

(a) The failure to analyze adequately the effects of greenhouse gas emissions otherwise required to be reduced pursuant to regulations adopted by the State Air Resources Board under Division 25.5 (commencing with Section 38500) of the Health and Safety Code in an environmental impact report, negative declaration, mitigated negative declaration, or other document required pursuant to this division for either a transportation project funded under the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2 of the Government Code), or a project funded under the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Chapter 1.699 (commencing with Section 5096.800) of Division 5), does not create a cause of action for a violation of this division.

(b) Nothing in this section shall be construed as a limitation to comply with any other requirement of this division or any other provision of law.

(c) This section shall apply retroactively to an environmental impact report, negative declaration, mitigated negative declaration, or other document required pursuant to this division that has not become final.

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

21098. LOW-LEVEL FLIGHT PATH; MILITARY IMPACT ZONE; SPECIAL USE AIRSPACE

(a) For the purposes of this section, the following terms have the following meanings:

(1) "Low-level flight path" includes any flight path for any aircraft owned, maintained, or that is under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)" published by the United States National Imagery and Mapping Agency.

(2) "Military impact zone" includes any area, including airspace, that meets both of the following criteria:

(A) Is within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense.

(B) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

(3) "Military service" means any branch of the United States Armed Forces.

(4) "Special use airspace" means the land area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that land area is established by the United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)" published by the United States National Imagery and Mapping Agency.

(b) If the United States Department of Defense or a military service notifies a lead agency of the contact office and address for the military service and the specific boundaries of a low-level flight path, military impact zone, or special use airspace, the lead agency shall submit notices, as required pursuant to Sections 21080.4 and 21092, to the military service if the project is within those boundaries and any of the following apply:

(1) The project includes a general plan amendment.

(2) The project is of statewide, regional, or areawide significance.

(3) The project is required to be referred to the airport land use commission, or appropriately designated body, pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(c) The requirement to submit notices imposed by this section does not apply to any of the following:

(1) Response actions taken pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(2) Response actions taken pursuant to Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code.

(3) Sites subject to corrective action orders issued pursuant to Section 25187 of the Health and Safety Code.

(d) (1) The effect or potential effect that a project may have on military activities does not itself constitute an adverse effect on the environment for the purposes of this division.

(2) Notwithstanding paragraph (1), a project's impact on military activities may cause, or be associated with, adverse effects on the environment that are subject to the requirements of this division, including, but not limited to, Section 21081.

Chapter 3: State Agencies, Boards and Commissions

§ 21100. ENVIRONMENTAL IMPACT REPORT ON PROPOSED STATE PROJECTS; SIGNIFICANT EFFECT; CUMULATIVE IMPACT ANALYSIS

(a) All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment. Whenever feasible, a standard format shall be used for environmental impact reports.

(b) The environmental impact report shall include a detailed statement setting forth all of the following:

(1) All significant effects on the environment of the proposed project.

(2) In a separate section:

(A) Any significant effect on the environment that cannot be avoided if the project is implemented.

(B) Any significant effect on the environment that would be irreversible if the project is implemented.

(3) Mitigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(4) Alternatives to the proposed project.

(5) The growth-inducing impact of the proposed project.

(c) The report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

(d) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(e) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis.

§ 21100.1. INFORMATION REQUIRED IN CERTAIN ENVIRONMENTAL IMPACT REPORTS

The information described in subparagraph (B) of paragraph (2) of subdivision (b) of Section 21100 shall be required only in environmental impact reports prepared in connection with the following:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency.

(b) The adoption by a local agency formation commission of a resolution making determinations.

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969.

§ 21100.2. LEASES, PERMITS, LICENSES, CERTIFICATES AND OTHER ENTITLEMENTS; ESTABLISHMENT OF TIME LIMITS FOR IMPACT REPORTS AND NEGATIVE DECLARATIONS

(a) (1) For projects described in subdivision (c) of Section 21065, each state agency shall establish, by resolution or order, time limits that do not exceed the following:

(A) One year for completing and certifying environmental impact reports.

(B) One hundred eighty days for completing and adopting negative declarations.

(2) The time limits specified in paragraph (1) shall apply only to those circumstances in which the state agency is the lead agency for a project. These resolutions or orders may establish different time limits for different types or classes of projects, but all limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the state agency.

(3) No application for a project may be deemed incomplete for lack of a waiver of time periods prescribed in state regulations.

(4) The resolutions or orders required by this section may provide for a reasonable extension of the time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

(b) If a draft environmental impact report, environmental impact report, or focused environmental impact report is prepared under a contract to a state agency, the contract shall be executed within 45 days from the date on which the state agency sends a notice of preparation pursuant to Section 21080.4. The state agency may take longer to execute the contract if the project applicant and the state agency mutually agree to an extension of the time limit provided by this subdivision.

§ 21101. ENVIRONMENTAL IMPACT REPORT ON PROPOSED FEDERAL PROJECTS

In regard to any proposed federal project in this state which may have a significant effect on the environment and on which the state officially comments, the state officials responsible for such comments shall include in their report a detailed statement setting forth the matters specified in Section 21100 prior to transmitting the comments of the state to the federal government. No report shall be transmitted to the federal government unless it includes such a detailed statement as to the matters specified in Section 21100.

§ 21102. REQUEST FOR OR AUTHORIZATION OF EXPENDITURE OF FUNDS; STATEMENT OF EFFECT ON ENVIRONMENT

No state agency, board, or commission shall request funds, nor shall any state agency, board, or commission which authorizes expenditures of funds, other than funds appropriated in the Budget Act, authorize funds for expenditure for any project, other than a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted or funded, which may have a significant effect on the environment unless such request or authorization is accompanied by an environmental impact report. Feasibility and planning studies exempted by this section from the preparation of an environmental impact report shall nevertheless include consideration of environmental factors.

§ 21104. STATE LEAD AGENCY; CONSULTATIONS PRIOR TO COMPLETION OF IMPACT REPORT

(a) Prior to completing an environmental impact report, the state lead agency shall consult with, and obtain comments from, each responsible agency, trustee agency, any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the project is located unless otherwise designated annually by agreement

between the state lead agency and the city or county, and may consult with any person who has special expertise with respect to any environmental impact involved. In the case of a project described in subdivision (c) of Section 21065, the state lead agency shall, upon the request of the applicant, provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. The state lead agency may consult with persons identified by the applicant who the applicant believes will be concerned with the environmental effects of the project and may consult with members of the public who have made a written request to be consulted on the project. A request by the applicant for early consultation shall be made not later than 30 days after the determination required by Section 21080.1 with respect to the project.

(b) The state lead agency shall consult with, and obtain comments from, the State Air Resources Board in preparing an environmental impact report on a highway or freeway project, as to the air pollution impact of the potential vehicular use of the highway or freeway.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project that are within an area of expertise of the agency or that are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.

§ 21104.2. CONSULTATION AND FINDINGS; EFFECT OF PROJECTS ON THREATENED OR ENDANGERED SPECIES

The state lead agency shall consult with, and obtain written findings from, the Department of Fish and Game in preparing an environmental impact report on a project, as to the impact of the project on the continued existence of any endangered species or threatened species pursuant to Article 4 (commencing with Section 2090) of Chapter 1.5 of Division 3 of the Fish and Game Code.

§ 21105. ENVIRONMENTAL IMPACT REPORT AND COMMENTS AS PART OF REGULAR PROJECT REPORT; AVAILABILITY TO LEGISLATURE AND GENERAL PUBLIC

The state lead agency shall include the environmental impact report as a part of the regular project report used in the existing review and budgetary process. It shall be available to the Legislature. It shall also be available for inspection by any member of the general public, who may secure a copy thereof by paying for the actual cost of such a copy. It shall be filed by the state lead agency with the appropriate local planning agency of any city, county, or city and county which will be affected by the project.

§ 21106. REQUEST OF FUNDS TO PROTECT ENVIRONMENT

All state agencies, boards, and commissions shall request in their budgets the funds necessary to protect the environment in relation to problems caused by their activities.

§ 21108. STATE AGENCY, BOARD OR COMMISSION; APPROVAL OF DETERMINATION TO CARRY OUT PROJECT; NOTICE; CONTENTS; PUBLIC INSPECTION; POSTING

(a) Whenever a state agency approves or determines to carry out a project that is subject to this division, the state agency shall file notice of that approval or that determination with the Office of Planning and Research. The notice shall indicate the determination of the state agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division.

(b) Whenever a state agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172, and the state agency approves or determines to carry out the project, the state agency or the person specified in subdivision (b) or (c) of Section 21065 may file notice of the determination with the Office of Planning and Research. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of

Section 21065 shall have a certificate of determination attached to it issued by the state agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the state agency.

(c) All notices filed pursuant to this section shall be available for public inspection, and a list of these notices shall be posted on a weekly basis in the Office of Planning and Research. Each list shall remain posted for a period of 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.

Chapter 4: Local Agencies

§ 21150. ENVIRONMENTAL IMPACT REPORT REQUIRED BEFORE ALLOCATION OF STATE OR FEDERAL FUNDS

State agencies, boards, and commissions, responsible for allocating state or federal funds on a project-by-project basis to local agencies for any project which may have a significant effect on the environment, shall require from the responsible local governmental agency a detailed statement setting forth the matters specified in Section 21100 prior to the allocation of any funds other than funds solely for projects involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded.

§ 21151. LOCAL AGENCIES; PREPARATION AND COMPLETION OF IMPACT REPORT; SUBMISSION AS PART OF GENERAL PLAN REPORT; SIGNIFICANT EFFECT

(a) All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project that they intend to carry out or approve which may have a significant effect on the environment. When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as a part of that report.

(b) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(c) If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any.

§ 21151.1. WASTE-BURNING PROJECTS; LAND DISPOSAL FACILITIES, AND OFFSITE LARGE TREATMENT FACILITIES; ENVIRONMENTAL IMPACT REPORTS; APPLICATION OF SECTION; EXEMPTIONS; OFFSITE FACILITY DEFINED

(a) Notwithstanding paragraph (6) of subdivision (b) of Section 21080, or Section 21080.5 or 21084, or any other provision of law, except as provided in this section, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report or, if appropriate, a modification, addendum, or supplement to an existing environmental impact report, for any project involving any of the following:

(1) (A) The burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, if the project is either of the following:

(i) The construction of a new facility.

(ii) The expansion of an existing facility that burns hazardous waste that would increase its permitted capacity by more than 10 percent.

(B) This paragraph does not apply to any project exclusively burning hazardous waste, for which a final determination under Section 21080.1 has been made prior to July 14, 1989.

(2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety Code.

(3) The initial issuance of a hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code to an offsite large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of the Health and Safety Code.

(4) A base reuse plan as defined in Section 21083.8 or 21083.8.1. The Legislature hereby finds that no reimbursement is required pursuant to Section 6 of Article XIIIB of the California Constitution for an environmental impact report for a base reuse plan if an environmental impact report is otherwise required for that base reuse plan pursuant to any other provision of this division.

(b) For purposes of clause (ii) of subparagraph (A) of subparagraph (B) of paragraph (1) of subdivision (a), the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(1) The facility capacity authorized in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(2) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(c) For purposes of paragraphs (2) and (3) of subdivision (a), the initial issuance of a hazardous waste facilities permit does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(d) Paragraph (1) of subdivision (a) does not apply to any project that does any of the following:

(1) Exclusively burns digester gas produced from manure or any other solid or semisolid animal waste.

(2) Exclusively burns methane gas produced from a disposal site, as defined in Section 40122, that is used only for the disposal of solid waste, as defined in Section 40191.

(3) Exclusively burns forest, agricultural, wood, or other biomass wastes.

(4) Exclusively burns hazardous waste in an incineration unit that is transportable and that is either at a site for not longer than three years or is part of a remedial or removal action. For purposes of this paragraph, "transportable" means any equipment that performs a "treatment" as defined in Section 66216 of Title 22 of the California Code of Regulations, and that is transported on a vehicle as defined in Section 66230 of Title 22 of the California Code of Regulations, as those sections read on June 1, 1991.

(5) Exclusively burns refinery waste in a flare on the site of generation.

(6) Exclusively burns in a flare methane gas produced at a municipal sewage treatment plant.

(7) Exclusively burns hazardous waste, or exclusively burns hazardous waste as a supplemental fuel, as part of a research, development, or demonstration project that, consistent with federal regulations implementing the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been determined to be innovative and experimental by the Department of Toxic Substances Control and that is

limited in type and quantity of waste to that necessary to determine the efficacy and performance capabilities of the technology or process; provided, however, that any facility that operated as a research, development, or demonstration project and for which an application is thereafter submitted for a hazardous waste facility permit for operation other than as a research, development, or demonstration project shall be considered a new facility for the burning of hazardous waste and shall be subject to subdivision (a) of Section 21151.1.

(8) Exclusively burns soils contaminated only with petroleum fuels or the vapors from these soils.

(9) Exclusively treats less than 3,000 pounds of hazardous waste per day in a thermal processing unit operated in the absence of open flame, and submits a worst-case health risk assessment of the technology to the Department of Toxic Substances Control for review and distribution to the interested public. This assessment shall be prepared in accordance with guidelines set forth in the Air Toxics Assessment Manual of the California Air Pollution Control Officers Association.

(10) Exclusively burns less than 1,200 pounds per day of medical waste, as defined in Section 117690 of the Health and Safety Code, on hospital sites.

(11) Exclusively burns chemicals and fuels as part of firefighter training.

(12) Exclusively conducts open burns of explosives subject to the requirements of the air pollution control district or air quality management district and in compliance with OSHA and Cal-OSHA regulations.

(13) Exclusively conducts onsite burning of less than 3,000 pounds per day of fumes directly from a manufacturing or commercial process.

(14) Exclusively conducts onsite burning of hazardous waste in an industrial furnace that recovers hydrogen chloride from the flue gas if the hydrogen chloride is subsequently sold, distributed in commerce, or used in a manufacturing process at the site where the hydrogen chloride is recovered, and the burning is in compliance with the requirements of the air pollution control district or air quality management district and the Department of Toxic Substances Control.

(e) Paragraph (1) of subdivision (a) does not apply to any project for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction under Chapter 6 (commencing with Section 25500) of Division 15.

(f) Paragraphs (2) and (3) of subdivision (a) do not apply if the facility only manages hazardous waste that is identified or listed pursuant to Section 25140 or 25141 of the Health and Safety Code on or after January 1, 1992, but not before that date, or only conducts activities that are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992, but not before that date.

(g) This section does not exempt a project from any other requirement of this division.

(h) For purposes of this section, offsite facility means a facility that serves more than one generator of hazardous waste.

§ 21151.2. SCHOOL SITE PROPOSED ACQUISITION OR ADDITION; NOTICE TO PLANNING COMMISSION; INVESTIGATION; REPORT

To promote the safety of pupils and comprehensive community planning the governing board of each school district before acquiring title to property for a new school site or for an addition to a present school site, shall give the planning commission having jurisdiction notice in writing of the proposed acquisition. The planning commission shall investigate the proposed site and within 30

days after receipt of the notice shall submit to the governing board a written report of the investigation and its recommendations concerning acquisition of the site.

The governing board shall not acquire title to the property until the report of the planning commission has been received. If the report does not favor the acquisition of the property for a school site, or for an addition to a present school site, the governing board of the school district shall not acquire title to the property until 30 days after the commission's report is received.

§ 21151.4. CONSTRUCTION OR ALTERATION OF FACILITY WITHIN ONE-FOURTH OF A MILE OF SCHOOL; REASONABLE ANTICIPATION OF AIR EMISSION OR HANDLING OF HAZARDOUS OR ACUTELY HAZARDOUS MATERIAL; APPROVAL OF ENVIRONMENTAL IMPACT REPORT OR NEGATIVE DECLARATION

(a) An environmental impact report shall not be certified or a negative declaration shall not be approved for any project involving the construction or alteration of a facility within one-fourth of a mile of a school that might reasonably be anticipated to emit hazardous air emissions, or that would handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the state threshold quantity specified pursuant to subdivision (j) of Section 25532 of the Health and Safety Code, that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless both of the following occur:

(~~a~~1) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(~~b~~2) The school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

(b) As used in this section, the following definitions apply:

(1) "Extremely hazardous substance" means an extremely hazardous substance as defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

(2) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air of a substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

§ 21151.5. TIME LIMITS FOR PREPARATION OF ENVIRONMENTAL IMPACT REPORTS AND NEGATIVE DECLARATIONS

(a) (1) For projects described in subdivision (c) of Section 21065, each local agency shall establish, by ordinance or resolution, time limits that do not exceed the following:

(A) One year for completing and certifying environmental impact reports.

(B) One hundred eighty days for completing and adopting negative declarations.

(2) The time limits specified in paragraph (1) shall apply only to those circumstances in which the local agency is the lead agency for a project. These ordinances or resolutions may establish different time limits for different types or classes of projects and different types of environmental impact reports, but all limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the local agency.

(3) No application for a project may be deemed incomplete for lack of a waiver of time periods prescribed by local ordinance or resolution.

(4) The ordinances or resolutions required by this section may provide for a reasonable extension of the time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

(b) If a draft environmental impact report, environmental impact report, or focused environmental impact report is prepared under a contract to a local agency, the contract shall be executed within 45 days from the date on which the local agency sends a notice of preparation pursuant to Section 21080.4. The local agency may take longer to execute the contract if the project applicant and the local agency mutually agree to an extension of the time limit provided by this subdivision.

§ 21151.7. PREPARATION AND CERTIFICATION OF COMPLETION OF ENVIRONMENTAL IMPACT REPORT FOR OPEN-PIT MINING OPERATION BY LEAD AGENCY

Notwithstanding any other provision of law, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report for any open-pit mining operation which is subject to the permit requirements of the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2) and utilizes a cyanide heap-leaching process for the purpose of producing gold or other precious metals.

§ 21151.8. SCHOOLSITE ACQUISITION OR CONSTRUCTION; APPROVAL OF ENVIRONMENTAL IMPACT REPORT OR NEGATIVE DECLARATION; CONDITIONS

(a) An environmental impact report shall not be certified or a negative declaration shall not be approved for a project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, extremely hazardous substances, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) (A) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or extremely hazardous

substances or waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.

(B) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to subparagraph (A) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with subparagraph (A) as to the area of responsibility of an agency that does not respond within 30 days.

(C) If the school district, as a lead agency, has carried out the consultation required by subparagraph (A), the environmental impact report or the negative declaration shall be conclusively presumed to comply with subparagraph (A), notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in subparagraph (A).

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

(B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii) or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(b) As used in this section, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Extremely hazardous substances" means an extremely hazardous substance as defined pursuant to paragraph (2) of subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code to implement and enforce Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

§ 21151.9. PROJECTS SUBJECT TO THIS DIVISION; COMPLIANCE REQUIREMENT

Whenever a city or county determines that a project, as defined in Section 10912 of the Water Code, is subject to this division, it shall comply with Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code.

§ 21151.10. [DELETED]

§ 21152. LOCAL AGENCY; APPROVAL OR DETERMINATION TO CARRY OUT PROJECT; NOTICE; CONTENTS; PUBLIC INSPECTION; POSTING

(a) Whenever a local agency approves or determines to carry out a project that is subject to this division, the local agency shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located. The notice shall indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. The notice shall also include certification that the final environmental impact report, if one was prepared, together with comments and responses, is available to the general public.

(b) Whenever a local agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21172, and the local agency approves or determines to carry out the project, the local agency or the person specified in subdivision (b) or (c) of Section 21065 may file a notice of the determination with the county clerk of each county in which the project will be located. A notice filed pursuant to this subdivision by a person

specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local agency.

(c) All notices filed pursuant to this section shall be available for public inspection, and shall be posted within 24 hours of receipt in the office of the county clerk. A notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 12 months.

§ 21152.1. LOCAL AGENCY; EXEMPT HOUSING PROJECTS; NOTICE FILING AND POSTING

(a) When a local agency determines that a project is not subject to this division pursuant to Section 21159.22, 21159.23, or 21159.24, and it approves or determines to carry out that project, the local agency or the person specified in subdivision (b) or (c) of Section 21065, shall file notice of the determination with the Office of Planning and Research.

(b) All notices filed pursuant to this section shall be available for public inspection, and a list of these notices shall be posted on a weekly basis in the Office of Planning and Research. Each list shall remain posted for a period of 30 days.

(c) Failure to file the notice required by this section does not affect the validity of a project.

(d) Nothing in this section affects the time limitations contained in Section 21167.

§ 21153. LOCAL LEAD AGENCY; CONSULTATIONS PRIOR TO COMPLETION OF IMPACT REPORT

(a) Prior to completing an environmental impact report, every local lead agency shall consult with, and obtain comments from, each responsible agency, trustee agency, any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the project is located unless otherwise designated annually by agreement between the local lead agency and the city or county, and may consult with any person who has special expertise with respect to any environmental impact involved. In the case of a project described in subdivision (c) of Section 21065, the local lead agency shall, upon the request of the project applicant, provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. The local lead agency may consult with persons identified by the project applicant who the applicant believes will be concerned with the environmental effects of the project and may consult with members of the public who have made written request to be consulted on the project. A request by the project applicant for early consultation shall be made not later than 30 days after the date that the determination required by Section 21080.1 was made with respect to the project. The local lead agency may charge and collect a fee from the project applicant in an amount that does not exceed the actual costs of the consultations.

(b) In the case of a project described in subdivision (a) of Section 21065, the lead agency may provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. At the request of the lead agency, the Office of Planning and Research shall ensure that each responsible agency, and any public agency that has jurisdiction by law with respect to the project, is notified regarding any early consultation.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project that are within an area of expertise of the agency or that are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.

§ 21154. ISSUANCE OF PROJECT ORDER BY STATE; EFFECT ON IMPACT REPORT OF LOCAL AGENCY

Whenever any state agency, board, or commission issues an order which requires a local agency to carry out a project which may have a significant effect on the environment, any environmental impact report which the local agency may prepare shall be limited to consideration of those factors and alternatives which will not conflict with such order.

Chapter 4.2: Implementation of the Sustainable Communities Strategy

§ 21155.

(a) This chapter applies only to a transit priority project that is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(b) For purposes of this chapter, a transit priority project shall (1) contain at least 50 percent residential use, based on total building square footage and, if the project contains between 26 percent and 50 percent nonresidential uses, a floor area ratio of not less than 0.75; (2) provide a minimum net density of at least 20 dwelling units per acre; and (3) be within one-half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan. A major transit stop is as defined in Section 21064.3, except that, for purposes of this section, it also includes major transit stops that are included in the applicable regional transportation plan. For purposes of this section, a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. A project shall be considered to be within one-half mile of a major transit stop or high-quality transit corridor if all parcels within the project have no more than 25 percent of their area farther than one-half mile from the stop or corridor and if not more than 10 percent of the residential units or 100 units, whichever is less, in the project are farther than one-half mile from the stop or corridor.

§ 21155. 1.

If the legislative body finds, after conducting a public hearing, that a transit priority project meets all of the requirements of subdivisions (a) and (b) and one of the requirements of subdivision (c), the transit priority project is declared to be a sustainable communities project and shall be exempt from this division.

(a) The transit priority project complies with all of the following environmental criteria:

(1) The transit priority project and other projects approved prior to the approval of the transit priority project but not yet built can be adequately served by existing utilities, and the transit priority project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(2) (A) The site of the transit priority project does not contain wetlands or riparian areas and does not have significant value as a wildlife habitat, and the transit priority project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3

of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(B) For the purposes of this paragraph, "wetlands" has the same meaning as in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) For the purposes of this paragraph:

(i) "Riparian areas" means those areas transitional between terrestrial and aquatic ecosystems and that are distinguished by gradients in biophysical conditions, ecological processes, and biota. A riparian area is an area through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. A riparian area includes those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems. A riparian area is adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines.

(ii) "Wildlife habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(iii) Habitat of "significant value" includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code); habitat identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife.

(3) The site of the transit priority project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(4) The site of the transit priority project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

(A) If a release of a hazardous substance is found to exist on the site, the release shall be removed or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(B) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(5) The transit priority project does not have a significant effect on historical resources pursuant to Section 21084.1.

(6) The transit priority project site is not subject to any of the following:

(A) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(B) An unusually high risk of fire or explosion from materials stored or used on nearby properties.

(C) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(D) Seismic risk as a result of being within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.

(E) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(7) The transit priority project site is not located on developed open space.

(A) For the purposes of this paragraph, "developed open space" means land that meets all of the following criteria:

(i) Is publicly owned, or financed in whole or in part by public funds.

(ii) Is generally open to, and available for use by, the public.

(iii) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(B) For the purposes of this paragraph, "developed open space" includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired with public funds dedicated to the acquisition of land for housing purposes.

(8) The buildings in the transit priority project are 15 percent more energy efficient than required by Chapter 6 of Title 24 of the California Code of Regulations and the buildings and landscaping are designed to achieve 25 percent less water usage than the average household use in the region.

(b) The transit priority project meets all of the following land use criteria:

(1) The site of the transit priority project is not more than eight acres in total area.

(2) The transit priority project does not contain more than 200 residential units.

(3) The transit priority project does not result in any net loss in the number of affordable housing units within the project area.

(4) The transit priority project does not include any single level building that exceeds 75,000 square feet.

(5) Any applicable mitigation measures or performance standards or criteria set forth in the prior environmental impact reports, and adopted in findings, have been or will be incorporated into the transit priority project.

(6) The transit priority project is determined not to conflict with nearby operating industrial uses.

(7) The transit priority project is located within one-half mile of a rail transit station or a ferry terminal included in a regional transportation plan or within one-quarter mile of a high-quality transit corridor included in a regional transportation plan.

(c) The transit priority project meets at least one of the following three criteria:

(1) The transit priority project meets both of the following:

(A) At least 20 percent of the housing will be sold to families of moderate income, or not less than 10 percent of the housing will be rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

(B) The transit priority project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs

with an affordable housing cost or affordable rent, as defined in Section 50052.5 or 50053 of the Health and Safety Code, respectively, for the period required by the applicable financing. Rental units shall be affordable for at least 55 years. Ownership units shall be subject to resale restrictions or equity sharing requirements for at least 30 years.

(2) The transit priority project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to paragraph (1).

(3) The transit priority project provides public open space equal to or greater than five acres per 1,000 residents of the project.

21155.2.

(a) A transit priority project that has incorporated all feasible mitigation measures, performance standards, or criteria set forth in the prior applicable environmental impact reports and adopted in findings made pursuant to Section 21081, shall be eligible for either the provisions of subdivision (b) or (c).

(b) A transit priority project that satisfies the requirements of subdivision (a) may be reviewed through a sustainable communities environmental assessment as follows:

(1) An initial study shall be prepared to identify all significant or potentially significant impacts of the transit priority project, other than those which do not need to be reviewed pursuant to Section 21159.28 based on substantial evidence in light of the whole record. The initial study shall identify any cumulative effects that have been adequately addressed and mitigated pursuant to the requirements of this division in prior applicable certified environmental impact reports. Where the lead agency determines that a cumulative effect has been adequately addressed and mitigated, that cumulative effect shall not be treated as cumulatively considerable for the purposes of this subdivision.

(2) The sustainable communities environmental assessment shall contain measures that either avoid or mitigate to a level of insignificance all potentially significant or significant effects of the project required to be identified in the initial study.

(3) A draft of the sustainable communities environmental assessment shall be circulated for public comment for a period of not less than 30 days. Notice shall be provided in the same manner as required for an environmental impact report pursuant to Section 21092.

(4) Prior to acting on the sustainable communities environmental assessment, the lead agency shall consider all comments received.

(5) A sustainable communities environmental assessment may be approved by the lead agency after conducting a public hearing, reviewing the comments received, and finding that:

(A) All potentially significant or significant effects required to be identified in the initial study have been identified and analyzed.

(B) With respect to each significant effect on the environment required to be identified in the initial study, either of the following apply:

(i) Changes or alterations have been required in or incorporated into the project that avoid or mitigate the significant effects to a level of insignificance.

(ii) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(6) The legislative body of the lead agency shall conduct the public hearing or a planning commission may conduct the public hearing if local ordinances allow a direct appeal of

approval of a document prepared pursuant to this division to the legislative body subject to a fee not to exceed five hundred dollars ($500).

(7) The lead agency's decision to review and approve a transit priority project with a sustainable communities environmental assessment shall be reviewed under the substantial evidence standard.

(c) A transit priority project that satisfies the requirements of subdivision (a) may be reviewed by an environmental impact report that complies with all of the following:

(1) An initial study shall be prepared to identify all significant or potentially significant effects of the transit priority project other than those that do not need to be reviewed pursuant to Section 21159.28 based upon substantial evidence in light of the whole record. The initial study shall identify any cumulative effects that have been adequately addressed and mitigated pursuant to the requirements of this division in prior applicable certified environmental impact reports. Where the lead agency determines that a cumulative effect has been adequately addressed and mitigated, that cumulative effect shall not be treated as cumulatively considerable for the purposes of this subdivision.

(2) An environmental impact report prepared pursuant to this subdivision need only address the significant or potentially significant effects of the transit priority project on the environment identified pursuant to paragraph (1). It is not required to analyze off-site alternatives to the transit priority project. It shall otherwise comply with the requirements of this division.

§ 21155.3

(a) The legislative body of a local jurisdiction may adopt traffic mitigation measures that would apply to transit priority projects. These measures shall be adopted or amended after a public hearing and may include requirements for the installation of traffic control improvements, street or road improvements, and contributions to road improvement or transit funds, transit passes for future residents, or other measures that will avoid or mitigate the traffic impacts of those transit priority projects.

(b) (1) A transit priority project that is seeking a discretionary approval is not required to comply with any additional mitigation measures required by paragraph (1) or (2) of subdivision (a) of Section 21081, for the traffic impacts of that project on intersections, streets, highways, freeways, or mass transit, if the local jurisdiction issuing that discretionary approval has adopted traffic mitigation measures in accordance with this section.

(2) Paragraph (1) does not restrict the authority of a local jurisdiction to adopt feasible mitigation measures with respect to the effects of a project on public health or on pedestrian or bicycle safety.

(c) The legislative body shall review its traffic mitigation measures and update them as needed at least every five years.

Chapter 4.5: Streamlined Environmental Review

Article 1: Findings

§ 21156. LEGISLATIVE INTENT

It is the intent of the Legislature in enacting this chapter that a master environmental impact report shall evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of subsequent projects to the greatest extent feasible. The Legislature further intends that the environmental review of subsequent projects be substantially reduced to the extent

that the project impacts have been reviewed and appropriate mitigation measures are set forth in a certified master environmental impact report.

Article 2: Master Environmental Impact Report

§ 21157. PREPARATION; CONTENT; FEE PROGRAM

(a) A master environmental impact report may be prepared for any one of the following projects:

(1) A general plan, element, general plan amendment, or specific plan.

(2) A project that consists of smaller individual projects that will be carried out in phases.

(3) A rule or regulation that will be implemented by subsequent projects.

(4) A project that will be carried out or approved pursuant to a development agreement.

(5) A public or private project that will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(6) A state highway project or mass transit project that will be subject to multiple stages of review or approval.

(7) A regional transportation plan or congestion management plan.

(8) A plan proposed by a local agency for the reuse of a federal military base or reservation that has been closed or that is proposed for closure.

(9) Regulations adopted by the Fish and Game Commission for the regulation of hunting and fishing.

(10) A plan for district projects to be undertaken by a school district, that also complies with applicable school facilities requirements, including, but not limited to, the requirements of Chapter 12.5 (commencing with Section 17070.10) of Part 10 of, and Article 1 (commencing with Section 17210) of Chapter 1 of Part 10.5 of, Division 1 of Title 1 of the Education Code.

(b) When a lead agency prepares a master environmental impact report, the document shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and, with regard to a public works facility, its anticipated capacity and service area.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the master environmental impact report. This description shall not be construed as a limitation on the impacts which may be considered in a focused environmental impact report.

(c) Lead agencies may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a master environmental impact report.

§ 21157.1. REVIEW OF SUBSEQUENT PROJECTS DESCRIBED IN REPORT; REQUIREMENTS

The preparation and certification of a master environmental impact report, if prepared and certified consistent with this division, may allow for the limited review of subsequent projects that were described in the master environmental impact report as being within the scope of the report, in accordance with the following requirements:

(a) The lead agency for a subsequent project shall be the lead agency or any responsible agency identified in the master environmental impact report.

(b) The lead agency shall prepare an initial study on any proposed subsequent project. This initial study shall analyze whether the subsequent project may cause any significant effect on the environment that was not examined in the master environmental impact report and whether the subsequent project was described in the master environmental impact report as being within the scope of the report.

(c) If the lead agency, based on the initial study, determines that a proposed subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158, that was not identified in the master environmental impact report and that no new or additional mitigation measures or alternatives may be required, the lead agency shall make a written finding based upon the information contained in the initial study that the subsequent project is within the scope of the project covered by the master environmental impact report. No new environmental document nor findings pursuant to Section 21081 shall be required by this division. Prior to approving or carrying out the proposed subsequent project, the lead agency shall provide notice of this fact pursuant to Section 21092 and incorporate all feasible mitigation measures or feasible alternatives set forth in the master environmental impact report which are appropriate to the project. Whenever a lead agency approves or determines to carry out any subsequent project pursuant to this section, it shall file a notice pursuant to Section 21108 or 21152.

(d) Where a lead agency cannot make the findings required in subdivision (c), the lead agency shall prepare, pursuant to Section 21157.7, either a mitigated negative declaration or environmental impact report.

§ 21157.5. MITIGATED NEGATIVE DECLARATIONS; PREPARATION; CONDITIONS; ALTERNATIVE

(a) A proposed mitigated negative declaration shall be prepared for any proposed subsequent project if both of the following occur:

  (1) An initial study has identified potentially new or additional significant effects on the environment that were not analyzed in the master environmental impact report.

  (2) Feasible mitigation measures or alternatives will be incorporated to revise the proposed subsequent project, before the negative declaration is released for public review, in order to avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment will occur.

(b) If there is substantial evidence in light of the whole record before the lead agency that the proposed subsequent project may have a significant effect on the environment and a mitigated negative declaration is not prepared, the lead agency shall prepare an environmental impact report or a focused environmental impact report pursuant to Section 21158.

§ 21157.6. LIMITATION PERIOD ON USE OF ENVIRONMENTAL IMPACT REPORT

(a) The master environmental impact report shall not be used for the purposes of this chapter if either of the following has occurred:

(1) The certification of the master environmental impact report occurred more than five years prior to the filing of an application for the subsequent project.

(2) The filing of an application for the subsequent project occurs following the certification of the master environmental impact report, and the approval of a project that was not described in the master environmental impact report, may affect the adequacy of the environmental review in the master environmental impact report for any subsequent project.

(b) A master environmental impact report that was certified more than five years prior to the filing of an application for the subsequent project may be used for purposes of this chapter to review a subsequent project that was described in the master environmental impact report if the lead agency reviews the adequacy of the master environmental impact report and does either of the following:

(1) Finds that no substantial changes have occurred with respect to the circumstances under which the master environmental impact report was certified or that no new information, which was not known and could not have been known at the time that the master environmental impact report was certified as complete, has become available.

(2) Prepares an initial study and, pursuant to the findings of the initial study, does either of the following:

(A) Certifies a subsequent or supplemental environmental impact report that has been either incorporated into the previously certified master environmental impact report or references any deletions, additions, or any other modifications to the previously certified master environmental impact report.

(B) Approves a mitigated negative declaration that addresses substantial changes that have occurred with respect to the circumstances under which the master environmental impact report was certified or the new information that was not known and could not have been known at the time the master environmental impact report was certified.

§ 21157.7. IMPROVEMENTS TO ROADWAY SEGMENTS OF HIGHWAY 99; USE OF MASTER ENVIRONMENTAL IMPACT REPORT

(a) For purposes of this section, a master environmental impact report is a document prepared in accordance with subdivision (c) for the projects described in subdivision (b) that, upon certification, is followed by review of subsequent projects as provided in Sections 21157.1 and 21157.5.

(b) A master environmental impact report may be prepared for a plan adopted by the Department of Transportation for improvements to regional segments of Highway 99 funded pursuant to subdivision (b) of Section 8879.23 of the Government Code, to streamline, coordinate, and improve environmental review.

(c) The report shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of the anticipated highway improvements along Highway 99 that would be within the scope of the master environmental impact report, that contains sufficient information about all phases of the Highway 99 construction activities, including, but not limited to, all of the following:

(A) The specific types of improvements that will be undertaken.

(B) The anticipated location and alternative locations for any of the Highway 99 improvements, including overpasses, bridges, railroad crossings, and interchanges.

(C) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the construction activities associated with the Highway 99 improvements.

(d) The Department of Transportation may communicate, coordinate, and consult with the Resources Agency, Wildlife Conservation Board, Department of Fish and Game, Department of Conservation, and other appropriate federal, state, or local governments, including interested stakeholders, to consider and implement mitigation requirements on a regional basis for the projects described in subdivision (b). This may include both of the following:

(1) Identification of priority areas for mitigation, using information from these agencies and departments as well as from other sources.

(2) Utilization of existing conservation programs of the agencies or departments identified in this subdivision, if mitigation under those programs for improvements under this section does not supplant mitigation for a project.

(e) The Department of Transportation may execute an agreement, memorandum of understanding, or other similar instrument to memorialize its understanding of any communication, coordination, or implementation activities with other state agencies for the purposes of meeting mitigation requirements on a regional basis.

(f) Notwithstanding any other provision of law, nothing in this section is intended to interfere with or prevent the existing authority of an agency or department to carry out its programs, projects, or responsibilities to identify, review, approve, deny, or implement any mitigation requirements, and nothing in this section shall be construed as a limitation on mitigation requirements for the project, or a limitation on compliance with requirements under this division or any other provision of law.

(g) Notwithstanding Section 21157.6, the master environmental impact report shall not be used for the purposes of this section, if the certification of the master environmental impact report occurred more than seven years prior to the filing of an application for the subsequent project.

Article 3: Focused Environmental Impact Report

§ 21158. PURPOSE; CONTENT; ADDITIONAL SIGNIFICANT EFFECT ON THE ENVIRONMENT

(a) A focused environmental impact report is an environmental impact report on a subsequent project identified in a master environmental impact report. A focused environmental impact report may be utilized only if the lead agency finds that the analysis in the master environmental impact report of cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment is adequate for the subsequent project.

The focused environmental impact report shall incorporate, by reference, the master environmental impact report and analyze only the subsequent project's additional significant effects on the environment, as defined in subdivision (d), and any new or additional mitigation measures or alternatives that were not identified and analyzed by the master environmental impact report.

(b) The focused environmental impact report need not examine those effects which the lead agency finds were one of the following:

(1) Mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of mitigation measures identified in the master environmental impact report which will be required as part of the approval of the subsequent project.

(2) Examined at a sufficient level of detail in the master environmental impact report to enable those significant environmental effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions, or by other means in connection with the approval of the subsequent project.

(3) Subject to a finding pursuant to paragraph (2) of subdivision (a) of Section 21081.

(c) A focused environmental impact report on any subsequent project shall analyze any significant effects on the environment where substantial new or additional information shows that the adverse environmental impact may be more significant than was described in the master environmental impact report. The substantial new or additional information may also show that mitigation measures or alternatives identified in the master environmental impact report, which were previously determined to be infeasible, are feasible and will avoid or reduce the significant effects on the environment of the subsequent project to a level of insignificance.

(d) For purposes of this chapter, "additional significant effects on the environment" are those project specific effects on the environment which were not addressed as significant effects on the environment in the master environmental impact report.

(e) Nothing in this chapter is intended to limit or abridge the ability of a lead agency to focus upon the issues that are ripe for decision at each level of environmental review, or to exclude duplicative analysis of environmental effects examined in previous environmental impact reports pursuant to Section 21093.

§ 21158.1. REGULATORY PROGRAMS CERTIFIED UNDER PUBLIC RESOURCES CODE § 21080.5; CERTAIN MASTER AND FOCUSED ENVIRONMENTAL IMPACT REPORTS

When a lead agency is required to prepare an environmental impact report pursuant to subdivision (d) of Section 21157.1 or is authorized to prepare a focused environmental impact report pursuant to Section 21158, the lead agency may not rely on subdivision (a) of Section 21080.5 for that purpose even though the lead agency's regulatory program is otherwise certified in accordance with Section 21080.5.

§ 21158.5. MULTIPLE-FAMILY RESIDENTIAL DEVELOPMENT OF NOT MORE THAN 100 UNITS; RESIDENTIAL AND COMMERCIAL OR RETAIL MIXED-USE DEVELOPMENT OF NOT MORE THAN 100,000 SQUARE FEET; PREPARATION OF REPORT; LIMITATIONS

(a) Where a project consists of multiple-family residential development of not more than 100 units or a residential and commercial or retail mixed-use development of not more than 100,000 square feet which complies with all of the following, a focused environmental impact report shall be prepared, notwithstanding that the project was not identified in a master environmental impact report:

(1) Is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an environmental impact report was prepared within five years of the certification of the focused environmental impact report.

(2) The lead agency cannot make the finding described in subdivision (c) of Section 21157.1, a negative declaration or mitigated negative declaration cannot be prepared pursuant to Section 21080, 21157.5, or 21158, and Section 21166 does not apply.

(3) Meets one or more of the following conditions:

(A) The parcel on which the project is to be developed is surrounded by immediately contiguous urban development.

(B) The parcel on which the project is to be developed has been previously developed with urban uses.

(C) The parcel on which the project is to be developed is within one-half mile of an existing rail transit station.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project, or which substantial new information shows will be more significant than described in the prior environmental impact report. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

Article 4: Expedited Environmental Review for Environmentally Mandated Projects

§ 21159. RULE OR REGULATION ADOPTION; ENVIRONMENTAL ANALYSIS; CONTENT

(a) An agency listed in Section 21159.4 shall perform, at the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, or a performance standard or treatment requirement, an environmental analysis of the reasonably foreseeable methods of compliance. In the preparation of this analysis, the agency may utilize numerical ranges or averages where specific data is not available; however, the agency shall not be required to engage in speculation or conjecture. The environmental analysis shall, at minimum, include all of the following:

(1) An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.

(2) An analysis of reasonably foreseeable feasible mitigation measures.

(3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation.

(b) The preparation of an environmental impact report at the time of adopting a rule or regulation pursuant to this division shall be deemed to satisfy the requirements of this section.

(c) The environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites.

(d) Nothing in this section shall require the agency to conduct a project level analysis.

(e) For purposes of this article, the term “performance standard” includes process or raw material changes or product reformulation.

(f) Nothing in this section is intended, or may be used, to delay the adoption of any rule or regulation for which an analysis is required to be performed pursuant to this section.

§ 21159.1. UTILIZATION OF FOCUSED ENVIRONMENTAL IMPACT REPORT; REQUIREMENTS; LIMITATIONS

(a) A focused environmental impact report may be utilized if a project meets all of the following requirements:

(1) The project consists solely of the installation of pollution control equipment required by a rule or regulation of an agency listed in Section 21159.4 and other components necessary to complete the installation of that equipment.

(2) The agency certified an environmental impact report on the rule or regulation or reviewed it pursuant to a certified regulatory program, and, in either case, the review included an assessment of growth inducing impacts and cumulative impacts of, and alternatives to, the project.

(3) The environmental review required by paragraph (2) was completed within five years of certification of the focused environmental impact report.

(4) An environmental impact report is not required pursuant to Section 21166.

(b) The discussion of significant effects on the environment in the focused environmental impact report shall be limited to project-specific potentially significant effects on the environment of the project which were not discussed in the environmental analysis of the rule or regulation required pursuant to subdivision (a) of Section 21159. No discussion of growth-inducing impacts or cumulative impacts shall be required in the focused environmental impact report, and the discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

§ 21159.2. NEGATIVE DECLARATION; MITIGATED NEGATIVE DECLARATION; ENVIRONMENTAL IMPACT REPORT ON COMPLIANCE PROJECT; PROJECT-SPECIFIC ISSUED; CONTENTS

(a) If a project consists solely of compliance with a performance standard or treatment requirement imposed by an agency listed in Section 21159.4, the lead agency for the compliance project shall, to the greatest extent feasible, utilize the environmental analysis required pursuant to subdivision (a) of Section 21159 in the preparation of a negative declaration, mitigated negative declaration, or environmental impact report on the compliance project or in otherwise fulfilling its responsibilities under this division. The use of numerical averages or ranges in an environmental analysis shall not relieve a lead agency of its obligations under this division to identify and evaluate the environmental effects of a compliance project.

(b) If the lead agency determines that an environmental impact report on the compliance project is required, the lead agency shall prepare an environmental impact report which addresses only the project-specific issues related to the compliance project or other issues that were not discussed in sufficient detail in the environmental analysis to enable the lead agency to fulfill its responsibilities under Section 21100 or 21151, as applicable. The mitigation measures imposed by the lead agency for the project shall relate only to the significant effects on the environment to be mitigated. The discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

§ 21159.3. DEADLINES FOR PREPARATION OF REPORT

In the preparation of any environmental impact report pursuant to Section 21159.1 or 21159.2, the following deadlines shall apply:

(a) A lead agency shall determine whether an environmental impact report should be prepared within 30 days of its determination that the application for the project is complete.

(b) If the environmental impact report will be prepared under contract to the lead agency pursuant to Section 21082.1, the lead agency shall issue a request for proposals for preparation of the environmental impact report as soon as it has enough information to prepare a request for proposals, and in any event, not later than 30 days after the time for response to the notice of preparation has expired. The contract shall be awarded within 30 days of the response date for the request for proposals.

§ 21159.4. AGENCIES; ARTICLE APPLICATION

This article shall apply to the following agencies: the State Air Resources Board, any district as defined in Section 39025 of the Health and Safety Code, the State Water Resources Control Board, a California regional water quality control board, the Department of Toxic Substances Control, and the California Integrated Waste Management Board.

Article 5: Public Assistance Program

§ 21159.9. IMPLEMENTATION OF PROGRAM

The Office of Planning and Research shall implement, utilizing existing resources, a public assistance and information program, to ensure efficient and effective implementation of this division, to do all of the following:

(a) Establish a public education and training program for planners, developers, and other interested parties to assist them in implementing this division.

(b) Establish and maintain a data base to assist in the preparation of environmental documents.

(c) Establish and maintain a central repository for the collection, storage, retrieval, and dissemination of notices of exemption, notices of preparation, notices of determination, and notices of completion provided to the office, and make the notices available through the Internet. The office may coordinate with another state agency for that agency to make the notices available through the Internet.

(d) Commencing January 1, 2003, copies of any documents submitted in electronic format to the Office of Planning and Research pursuant to this division shall be furnished by the office to the California State Library. The California State Library shall be the repository for those electronic documents, which shall be made available for viewing by the general public upon request.

Article 6: Special Review of Housing Projects

§ 21159.20. DEFINITIONS

For the purposes of this article, the following terms have the following meanings:

(a) "Census-defined place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

(b) "Community-level environmental review" means either of the following:

(1) An environmental impact report certified on any of the following:

(A) A general plan.

(B) A revision or update to the general plan that includes at least the land use and circulation elements.

(C) An applicable community plan.

(D) An applicable specific plan.

(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(2) Pursuant to this division and the implementing guidelines adopted pursuant to this division that govern subsequent review following a program environmental impact report, or pursuant to Section 21157.1, 21157.5, or 21166, a negative declaration or mitigated negative declaration was adopted as a subsequent environmental review document, following and based upon an environmental impact report on any of the projects listed in subparagraphs (A), (C), or (D) of paragraph (1).

(c) "Low-income households" means households of persons and families of very low and low income, as defined in Sections 50093 and 50105 of the Health and Safety Code.

(d) "Low- and moderate-income households" means households of persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

§ 21159.21. CRITERIA TO QUALIFY FOR HOUSING PROJECT EXEMPTIONS

A housing project qualifies for an exemption from this division pursuant to Section 21159.22, 21159.23, or 21159.24 if it meets the criteria in the applicable section and all of the following criteria:

(a) The project is consistent with any applicable general plan, specific plan, and local coastal program, including any mitigation measures required by a plan or program, as that plan or program existed on the date that the application was deemed complete and with any applicable zoning ordinance, as that zoning ordinance existed on the date that the application was deemed complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project does not contain wetlands, does not have any value as a wildlife habitat, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050), of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete. For the purposes of this subdivision, "wetlands" has the same meaning as in Section 328.3 of Title 33 of the Code of Federal Regulations and "wildlife habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

  (1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

  (2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1.

(h) The project site is not subject to any of the following:

  (1) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

  (2) An unusually high risk of fire or explosion from materials stored or used on nearby properties.

(3) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(4) Within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.

(5) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(i) (1) The project site is not located on developed open space.

(2) For the purposes of this subdivision, "developed open space" means land that meets all of the following criteria:

(A) Is publicly owned, or financed in whole or in part by public funds.

(B) Is generally open to, and available for use by, the public.

(C) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(3) For the purposes of this subdivision, "developed open space" includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(j) The project site is not located within the boundaries of a state conservancy.

§ 21159.22. AGRICULTURAL EMPLOYEE HOUSING EXEMPTION

(a) This division does not apply to any development project that meets the requirements of subdivision (b), and meets either of the following criteria:

(1) Consists of the construction, conversion, or use of residential housing for agricultural employees, and meets all of the following criteria:

(A) Is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Lacks public financial assistance.

(C) The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years.

(2) Consists of the construction, conversion, or use of residential housing for agricultural employees and meets all of the following criteria:

(A) Is housing for very low, low-, or moderate-income households as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(B) Public financial assistance exists for the development project.

(C) The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years.

(b) (1) If the development project is proposed within incorporated city limits or within a census defined place with a minimum population density of at least 5,000 persons per square mile, it is located on a project site that is adjacent, on at least two sides, to land that has been developed, and consists of not more than 45 units, or is housing for a total of 45 or fewer

agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(2) If the development project is located on a project site zoned for general agricultural use, and consists of not more than 20 units, or is housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(3) The project satisfies the criteria in Section 21159.21.

(4) The development project is not more than five acres in area, except that a project site located in an area with a population density of at least 1,000 persons per square mile shall not be more than two acres in area.

(c) Notwithstanding subdivision (a), if a project satisfies the criteria described in subdivisions (a) and (b), but does not satisfy the criteria described in paragraph (1) of subdivision (b), this division does not apply to the project if the project meets all of the following criteria:

(1) Is located within either an incorporated city or a census-defined place.

(2) The population density of the incorporated city or census-defined place has a population density of at least 1,000 persons per square mile.

(3) The project site is adjacent on at least two sides to land that has been developed and the project consists of not more than 45 units, or the project consist of dormitories, barracks, or other group housing facilities for a total of 45 or fewer agricultural employees.

(d) Notwithstanding subdivision (c), this division shall apply to a project that meets the criteria described in subdivision (c) if a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant.

For the purposes of this section, "agricultural employee" has the same meaning as defined by subdivision (b) of Section 1140.4 of the Labor Code.

§ 21159.23. LOW-INCOME HOUSING EXEMPTION

(a) This division does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of 100 or fewer that is affordable to low-income households if both of the following criteria are met:

(1) The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households, as defined in Section 50079.5 of the Health and Safety Code, for a period of at least 30 years, at monthly housing costs, as determined pursuant to Section 50053 of the Health and Safety Code.

(2) The development project meets all of the following requirements:

(A) The project satisfies the criteria described in Section 21159.21.

(B) The project site meets one of the following conditions:

(i) Has been previously developed for qualified urban uses.

(ii) The parcels immediately adjacent to the site are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses and the remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses, and the site has not been developed for urban uses and no parcel within the site has been created within 10 years prior to the proposed development of the site.

(C) The project site is not more than five acres in area.

(D) The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile or, if the project consists of 50 or fewer units, within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(b) Notwithstanding subdivision (a), if a project satisfies all of the criteria described in subdivision (a) except subparagraph (D) of paragraph (2) of that subdivision, this division does not apply to the project if the project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile.

(c) Notwithstanding subdivision (b), this division applies to a project that meets the criteria of subdivision (b), if there is a reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(d) For the purposes of this section, "residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

§ 21159.24. INFILL HOUSING EXEMPTION

(a) Except as provided in subdivision (b), this division does not apply to a project if all of the following criteria are met:

(1) The project is a residential project on an infill site.

(2) The project is located within an urbanized area.

(3) The project satisfies the criteria of Section 21159.21.

(4) Within five years of the date that the application for the project is deemed complete pursuant to Section 65943 of the Government Code, community-level environmental review was certified or adopted.

(5) The site of the project is not more than four acres in total area.

(6) The project does not contain more than 100 residential units.

(7) Either of the following criteria are met:

(A) (i) At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

(ii) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

(B) The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(8) The project is within one-half mile of a major transit stop.

(9) The project does not include any single level building that exceeds 100,000 square feet.

(10) The project promotes higher density infill housing. A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing. A project with a density of at least 10 units per acre and a density greater than the average

density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise.

(b) Notwithstanding subdivision (a), this division shall apply to a development project that meets the criteria described in subdivision (a), if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project, that was not known, and could not have been known, at the time that community-level environmental review was certified or adopted.

(c) If a project satisfies the criteria described in subdivision (a), but is not exempt from this division as result of satisfying the criteria described in subdivision (b), the analysis of the environmental effects of the project in the environmental impact report or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to paragraph (2) or (3) of subdivision (b).

(d) For the purposes of this section, "residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

§ 21159.25. [DELETED]

§ 21159.26. REDUCTIONS IN HOUSING UNITS AS MITIGATION DISCOURAGED

With respect to a project that includes a housing development, a public agency may not reduce the proposed number of housing units as a mitigation measure or project alternative for a particular significant effect on the environment if it determines that there is another feasible specific mitigation measure or project alternative that would provide a comparable level of mitigation. This section does not affect any other requirement regarding the residential density of that project.

§ 21159.27. PROHIBITION AGAINST PIECEMEALING TO QUALIFY FOR EXEMPTIONS

A project may not be divided into smaller projects to qualify for one or more exemptions pursuant to this article.

§ 21159.28.

(a) If a residential or mixed-use residential project is consistent with the use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board pursuant to subparagraph (I) –of paragraph (2) of subdivision (b) of Section 65080 of the Government Code has accepted the metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets and if the project incorporates the mitigation measures required by an applicable prior environmental document, then any findings or other determinations for an exemption, a negative declaration, a mitigated negative declaration, a sustainable communities environmental assessment, an environmental impact report, or addenda prepared or adopted for the project pursuant to this division shall not be required to reference, describe, or discuss (1) growth inducing impacts; or (2) any project

specific or cumulative impacts from cars and light-duty truck trips generated by the project on global warming or the regional transportation network.

(b) Any environmental impact report prepared for a project described in subdivision (a) shall not be required to reference, describe, or discuss a reduced residential density alternative to address the effects of car and light-duty truck trips generated by the project.

(c) "Regional transportation network," for purposes of this section, means all existing and proposed transportation system improvements, including the state transportation system, that were included in the transportation and air quality conformity modeling, including congestion modeling, for the final regional transportation plan adopted by the metropolitan planning organization, but shall not include local streets and roads. Nothing in the foregoing relieves any project from a requirement to comply with any conditions, exactions, or fees for the mitigation of the project's impacts on the structure, safety, or operations of the regional transportation network or local streets and roads.

(d) A residential or mixed-use residential project is a project where at least 75 percent of the total building square footage of the project consists of residential use or a project that is a transit priority project as defined in Section 21155.

Chapter 5: Submission of Information

§ 21160. APPLICATION FOR LEASE, PERMIT, LICENSE, ETC.; DATA AND INFORMATION; PURPOSE; TRADE SECRETS

Whenever any person applies to any public agency for a lease, permit, license, certificate, or other entitlement for use, the public agency may require that person to submit data and information which may be necessary to enable the public agency to determine whether the proposed project may have a significant effect on the environment or to prepare an environmental impact report.

If any or all of the information so submitted is a "trade secret" as defined in Section 6254.7 of the Government Code by those submitting that information, it shall not be included in the impact report or otherwise disclosed by any public agency. This section shall not be construed to prohibit the exchange of properly designated trade secrets between public agencies who have lawful jurisdiction over the preparation of the impact report.

§ 21161. COMPLETION OF IMPACT REPORT; NOTICE; VALIDITY OF PROJECT

Whenever a public agency has completed an environmental impact report, it shall cause a notice of completion of that report to be filed with the Office of Planning and Research. The notice of completion shall briefly identify the project and shall indicate that an environmental impact report has been prepared. The notice of completion shall identify the project location by latitude and longitude. Failure to file the notice required by this section shall not affect the validity of a project.

§ 21162. NOTICE OF COMPLETION OF IMPACT REPORT

A copy of the notice of completion of an environmental impact report on a project shall be provided, by the State Clearinghouse, to any legislator in whose district the project has an environmental impact, if the legislator requests the notice and the State Clearinghouse has received it.

Chapter 6: Limitations

§ 21165. LEAD AGENCY; PREPARATION OF IMPACT REPORT

(a) When a project is to be carried out or approved by two or more public agencies, the determination of whether the project may have a significant effect on the environment shall be

made by the lead agency, and that agency shall prepare, or cause to be prepared by contract, the environmental impact report for the project, if a report is required by this division. In the event that a dispute arises as to which is the lead agency, any of the disputing public agencies, or in the case of a project described in subdivision (c) of Section 21065 the applicant for such project, may submit the question to the Office of Planning and Research, and the Office of Planning and Research shall designate, within 21 days of receiving the request, the lead agency, giving due consideration to the capacity of that agency to adequately fulfill the requirements of this division.

(b) For the purposes of this section, a "dispute" means a contested, active difference of opinion between two or more public agencies as to which of those agencies shall prepare any necessary environmental document. A dispute exists where each of those agencies claims that it either has or does not have the obligation to prepare that environmental document. The Office of Planning and Research shall not designate a lead agency in the absence of such a dispute.

§ 21166. SUBSEQUENT OR SUPPLEMENTAL IMPACT REPORT; CONDITIONS

When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

§ 21166.1. EFFECT OF PREPARATION OF IMPACT REPORT BY LEAD AGENCY

The decision of a lead agency to prepare an environmental impact report with respect to environmental impacts within a geographic area or for a group of projects shall not be a basis for determining that an environmental document prepared for an individual project within that area or group is inadequate.

§ 21167. COMMENCEMENT OF ACTIONS OR PROCEEDINGS; TIME

An action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:

(a) An action or proceeding alleging that a public agency is carrying out or has approved a project that may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.

(b) An action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(c) An action or proceeding alleging that an environmental impact report does not comply with this division shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152 by the lead agency.

(d) An action or proceeding alleging that a public agency has improperly determined that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172 shall be commenced within 35 days from the date of the filing by the public agency, or person specified in subdivision (b) or (c) of Section 21065, of the notice authorized by subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If the notice has not been filed, the action or proceeding shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.

(e) An action or proceeding alleging that another act or omission of a public agency does not comply with this division shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(f) If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 prior to the date on which the agency approves or determines to carry out the project, then not later than five days from the date of the agency's action, the public agency shall deposit a written copy of the notice addressed to that person in the United States mail, first class postage prepaid. The date upon which this notice is mailed shall not affect the time periods specified in subdivisions (b), (c), (d), and (e).

§ 21167.1. PREFERENTIAL HEARING OR OTHER CIVIL ACTIONS; DESIGNATION OF JUDGES TO DEVELOP EXPERTISE

(a) In all actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5, including the hearing of an action or proceeding on appeal from a decision of a lower court, all courts in which the action or proceeding is pending shall give the action or proceeding preference over all other civil actions, in the matter of setting the action or proceeding for hearing or trial, and in hearing or trying the action or proceeding, so that the action or proceeding shall be quickly heard and determined. The court shall regulate the briefing schedule so that, to the extent feasible, the court shall commence hearings on an appeal within one year of the date of the filing of the appeal.

(b) To ensure that actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5 may be quickly heard and determined in the lower courts, the superior courts in all counties with a population of more than 200,000 shall designate one or more judges to develop expertise in this division and related land use and environmental laws, so that those judges will be available to hear, and quickly resolve, actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5.

(c) In an action or proceeding filed pursuant to this chapter that is joined with any other cause of action, the court, upon a motion by any party, may grant severance of the actions. In determining whether to grant severance, the court shall consider such as matters judicial economy, administrative economy, and prejudice to any party.

§ 21167.2. FAILURE TO COMMENCE ACTION OR PROCEEDING WITHIN TIME LIMITS; PRESUMPTION THAT IMPACT REPORT COMPLIES WITH DIVISION

If no action or proceeding alleging that an environmental impact report does not comply with the provisions of this division is commenced during the period prescribed in subdivision (c) of Section 21167, the environmental impact report shall be conclusively presumed to comply with the provisions of this division for purposes of its use by responsible agencies, unless the provisions of Section 21166 are applicable.

§ 21167.3. ASSUMPTION THAT IMPACT REPORT OR NEGATIVE DECLARATION COMPLIES WITH DIVISION; CONDITIONAL APPROVAL OR DISAPPROVAL

(a) If an action or proceeding alleging that an environmental impact report or a negative declaration does not comply with the provisions of this division is commenced during the period described in subdivision (b) or (c) of Section 21167, and if an injunction or stay is issued prohibiting the project from being carried out or approved pending final determination of the issue of such compliance, responsible agencies shall assume that the environmental impact report or the negative declaration for the project does comply with the provisions of this division and shall issue a conditional approval or disapproval of such project according to the timetable for agency action in Article 5 (commencing with Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the Government Code. A conditional approval shall constitute permission to proceed with a project when and only when such action or proceeding results in a final determination that the environmental impact report or negative declaration does comply with the provisions of this division.

(b) In the event that an action or proceeding is commenced as described in subdivision (a) but no injunction or similar relief is sought and granted, responsible agencies shall assume that the environmental impact report or negative declaration for the project does comply with the provisions of this division and shall approve or disapprove the project according to the timetable for agency action in Article 5 (commencing with Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the Government Code. Such approval shall constitute permission to proceed with the project at the applicant's risk pending final determination of such action or proceeding.

§ 21167.4. MANDATE PROCEEDING ALLEGING NONCOMPLIANCE WITH DIVISION; HEARING REQUEST; DISMISSAL; BRIEFING SCHEDULES AND HEARING DATES

(a) In any action or proceeding alleging noncompliance with this division, the petitioner shall request a hearing within 90 days from the date of filing the petition or shall be subject to dismissal on the court's own motion or on the motion of any party interested in the action or proceeding.

(b) The petitioner shall serve a notice of the request for a hearing on all parties at the time that the petitioner files the request for a hearing.

(c) Upon the filing of a request by the petitioner for a hearing and upon application by any party, the court shall establish a briefing schedule and a hearing date. In the absence of good cause, briefing shall be completed within 90 days from the date that the request for a hearing is filed, and the hearing, to the extent feasible, shall be held within 30 days thereafter. Good cause may include, but shall not be limited to, the conduct of discovery, determination of the completeness of the record of proceedings, the complexity of the issues, and the length of the record of proceedings and the timeliness of its production. The parties may stipulate to a briefing schedule or hearing date that differs from the schedule set forth in this subdivision if the stipulation is approved by the court.

§ 21167.5. PROOF OF SERVICE; FILING WITH INITIAL PLEADING

Proof of prior service by mail upon the public agency carrying out or approving the project of a written notice of the commencement of any action or proceeding described in Section 21167 identifying the project shall be filed concurrently with the initial pleading in such action or proceeding.

§ 21167.6. RECORD OF PROCEEDINGS; CLERK'S TRANSCRIPT ON APPEAL; FILING BRIEFS ON APPEAL; DATE OF APPEAL FOR HEARING

Notwithstanding any other provision of law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the complaint or petition, shall be served personally upon the public agency not later than 10 business days from the date that the action or proceeding was filed.

(b) (1) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. Upon certification, the public agency shall lodge a copy of the record of proceedings with the court and shall serve on the parties notice that the record of proceedings has been certified and lodged with the court. The parties shall pay any reasonable costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(2) The plaintiff or petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.

(c) The time limit established by subdivision (b) may be extended only upon the stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions that may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.

(d) If the public agency fails to prepare and certify the record within the time limit established in paragraph (1) of subdivision (b), or any continuances of that time limit, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The record of proceedings shall include, but is not limited to, all of the following items:

(1) All project application materials.

(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

(4) Any transcript or minutes of the proceedings at which the decision-making body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decisionmaking body prior to action on the environmental documents or on the project.

(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency's files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.

(11) The full written record before any inferior administrative decision-making body whose decision was appealed to a superior administrative decision-making body prior to the filing of litigation.

(f) In preparing the record of proceedings, the party preparing the record shall strive to do so at reasonable cost in light of the scope of the record.

(g) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date that the notice designating the papers or records to be included in the clerk's transcript was filed with the superior court, if the party or parties pay any costs or fees for the preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed by appendix, as provided in Rule 8.124 of the California Rules of Court.

(h) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions for the filing of a brief on appeal shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(i) At the completion of the filing of briefs on appeal, the appellant shall notify the court of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

§ 21167.6.5. SERVICE OF REAL PARTY IN INTEREST; LISTING AND NOTICE TO RESPONSIBLE AND TRUSTEE AGENCIES; FAILURE TO NAME POTENTIAL PARTIES

(a) The petitioner or plaintiff shall name, as a real party in interest, any recipient of an approval that is the subject of an action or proceeding brought pursuant to Section 21167, 21168, or 21168.5, and shall serve the petition or complaint on that real party in interest, by personal service, mail facsimile, or any other method permitted by law not later than 20 business days following service of the petition or complaint on the public agency.

(b) The public agency shall provide the petitioner or plaintiff, not later than 10 business days following service of the petition or complaint on the public agency, with a list of responsible agencies and any public agency having jurisdiction over a natural resource affected by the project.

(c) The petitioner or plaintiff shall provide the responsible agencies, and any public agency having jurisdiction over a natural resource affected by the project, with notice of the action or proceeding within 15 days of receipt of the list described in subdivision (b).

(d) Failure to name potential parties, other than those real parties in interest described in subdivision (a), is not grounds for dismissal pursuant to Section 389 of the Code of Civil Procedure.

(e) Nothing in this section is intended to affect an existing right of a party to intervene in the action.

§ 21167.7. COPY OF PLEADINGS TO ATTORNEY GENERAL; GRANTING OF RELIEF

Every person who brings an action pursuant to Section 21167 shall comply with the requirements of Section 388 of the Code of Civil Procedure. Every such person shall also furnish pursuant to Section 388 of the Code of Civil Procedure a copy of any amended or supplemental pleading filed by such person in such action to the Attorney General. No relief, temporary or permanent, shall be granted until a copy of the pleading has been furnished to the Attorney General in accordance with such requirements.

§ 21167.8. SETTLEMENT MEETING; PRESETTLEMENT AND SETTLEMENT STATEMENTS; FURTHER SETTLEMENT CONFERENCE; FAILURE TO PARTICIPATE

(a) Not later than 20 days from the date of service upon a public agency of a petition or complaint brought pursuant to Section 21167, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not later than 45 days from the date of service of the petition or complaint upon the public agency.

The notice of the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity of counsel for any party, the notice shall be served by mail upon the party for whom counsel is not known.

(b) At the time and place specified in the notice filed with the court, the parties shall meet and confer regarding anticipated issues to be raised in the litigation and shall attempt in good faith to settle the litigation and the dispute which forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

(c) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be conducted concurrently with any judicial proceedings.

(d) If the litigation is not settled, the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties that have only one judge of the superior court.

(e) The failure of any party, who was notified pursuant to subdivision (a), to participate in the litigation settlement process, without good cause, may result in an imposition of sanctions by the court.

(f) Not later than 30 days from the date that notice of certification of the record of proceedings was filed and served in accordance with Section 21167.6, the petitioner or plaintiff shall file and serve on all other parties a statement of issues which the petitioner or plaintiff intends to raise in any brief or at any hearing or trial. Not later than 10 days from the date on which the respondent or real party in interest has been served with the statement of issues from the petitioner or plaintiff, each respondent and real party in interest shall file and serve on all other

parties a statement of issues which that party intends to raise in any brief or at any hearing or trial.

§ 21168. REVIEW OF DETERMINATION; FINDING OR DECISION OF PUBLIC AGENCY; LAW GOVERNING; SCOPE

Any action or proceeding to attack, review, set aside, void or annul a determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure.

In any such action, the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record.

§ 21168.5. ABUSE OF DISCRETION

In any action or proceeding, other than an action or proceeding under Section 21168, to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.

§ 21168.6. MANDATE TO PUBLIC UTILITIES COMMISSION; SUPREME COURT JURISDICTION

In any action or proceeding under Sections 21168 or 21168.5 against the Public Utilities Commission the writ of mandate shall lie only from the Supreme Court to such commission.

§ 21168.7. DECLARATION OF EXISTING LAW

Sections 21168 and 21168.5 are declaratory of existing law with respect to the judicial review of determinations or decisions of public agencies made pursuant to this division.

§ 21168.9. PUBLIC AGENCY ACTIONS; NONCOMPLIANCE WITH DIVISION; COURT ORDER; CONTENT; RESTRICTIONS

(a) If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall enter an order that includes one or more of the following:

  (1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.

  (2) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with this division.

  (3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.

(b) Any order pursuant to subdivision (a) shall include only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division. The order shall be made by the issuance of a peremptory writ

of mandate specifying what action by the public agency is necessary to comply with this division. However, the order shall be limited to that portion of a determination, finding, or decision or the specific project activity or activities found to be in noncompliance only if a court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division. The trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division.

(c) Nothing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way. Except as expressly provided in this section, nothing in this Section is intended to limit the equitable powers of the court.

§ 21169. VALIDATION OF PROJECTS.

Any project defined in subdivision (c) of Section 21065 undertaken, carried out or approved on or before the effective date of this section and the issuance by any public agency of any lease, permit, license, certificate or other entitlement for use executed or issued on or before the effective date of this section notwithstanding a failure to comply with this division, if otherwise legal and valid, is hereby confirmed, validated and declared legally effective. Any project undertaken by a person which was supported in whole or part through contracts with one or more public agencies on or before the effective date of this section, notwithstanding a failure to comply with this division, if otherwise legal and valid, is hereby confirmed, validated and declared legally effective.

§ 21170. JUDICIAL PROCEEDINGS IN PROGRESS; EFFECT

(a) Section 21169 shall not operate to confirm, validate or give legal effect to any project the legality of which was being contested in a judicial proceeding in which proceeding the pleadings, prior to the effective date of this section, alleged facts constituting a cause of action for, or raised the issue of, a violation of this division and which was pending and undetermined on the effective date of this section; provided, however, that Section 21169 shall operate to confirm, validate or give legal effect to any project to which this subdivision applies if, prior to the commencement of judicial proceedings and in good faith and in reliance upon the issuance by a public agency of any lease, permit, license, certificate or other entitlement for use, substantial construction has been performed and substantial liabilities for construction and necessary materials have been incurred.

(b) Section 21169 shall not operate to confirm, validate or give legal effect to any project which had been determined in any judicial proceeding, on or before the effective date of this section to be illegal, void or ineffective because of noncompliance with this division.

§ 21171. MORATORIUM PROVISION FOR CERTAIN PROJECTS

This division, except for Section 21169, shall not apply to the issuance of any lease, permit, license, certificate or other entitlement for use for any project defined in subdivision (c) of Section 21065 or to any project undertaken by a person which is supported in whole or in part through contracts with one or more public agencies until the 121st day after the effective date of this section. This section shall not apply to any project to which Section 21170 is applicable or to any successor project which is the same as, or substantially identical to, such a project.

This section shall not prohibit or prevent a public agency, prior to the 121st day after the effective date of this section, from considering environmental factors in connection with the approval or disapproval of a project and from imposing reasonable fees in connection therewith.

§ 21172. DISASTERS; PROPERTY OR FACILITIES DAMAGED; EXEMPTION

This division shall not apply to any project undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

§ 21172.5. EVALUATION OF PROJECTS AND STATUS OF IMPACT REPORTS DURING MORATORIUM PERIOD

Until the 121st day after the effective date of this section, any objectives, criteria and procedures adopted by public agencies in compliance with this division shall govern the evaluation of projects defined in subdivisions (a) and (b) of Section 21065 and the preparation of environmental impact reports on such projects when required by this division.

Any environmental impact report which has been completed or on which substantial work has been performed on or before the 121st day after the effective date of this section, if otherwise legally sufficient, shall, when completed, be deemed to be in compliance with this division and no further environmental impact report shall be required except as provided in Section 21166.

§ 21173. SEVERABILITY

If any provision of this division or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this division which can be given effect without the invalid provision or application thereof, and to this end the provisions of this division are severable.

§ 21174. CONSTRUCTION OF DIVISION; ENFORCEMENT OF OTHER PROVISIONS; COASTAL ACT

No provision of this division is a limitation or restriction on the power or authority of any public agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer, including, but not limited to, the powers and authority granted to the California Coastal Commission pursuant to Division 20 (commencing with Section 30000). To the extent of any inconsistency or conflict between the provisions of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000)) and the provisions of this division, the provisions of Division 20 (commencing with Section 30000) shall control.

§ 21175. LOCAL AGENCY FORMATION COMMISSION; CONFIRMATION, VALIDATION AND LEGALITY OF PROJECT APPROVALS

In the event that a local agency formation commission, acting pursuant to the provisions of Chapter 6.6 (commencing with Section 54773) of Part 1 of Division 2 of Title 5 of, or pursuant to Division 1 (commencing with Section 56000) of Title 6 of, the Government Code, has approved a project without complying with this division, such approval is hereby confirmed, validated, and declared legally effective notwithstanding the failure to comply with this division; provided, that such approval shall have occurred prior to February 7, 1975.

§ 21176. JUDICIAL PROCEEDINGS PENDING OR DETERMINED; EFFECT ON OPERATION OF § 21175

(a) Section 21175 shall not operate to confirm, validate, or give legal effect to any project, the legality of which was being contested in a judicial proceeding in which proceeding the pleadings, prior to February 7, 1975, alleged facts constituting a cause of action for, or raised the issue of, a violation of this division, and which was pending and undetermined on February 7, 1975.

(b) Section 21175 shall not operate to confirm, validate, or give legal effect to any project which had been determined in any judicial proceeding, on or before the effective date of this section, to be illegal, void, or ineffective because of noncompliance with this division.

§ 21177. PRESENTATION OF GROUNDS FOR NONCOMPLIANCE; OBJECTIONS TO APPROVAL OF PROJECT

(a) No action or proceeding may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.

(b) No person shall maintain an action or proceeding unless that person objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.

(c) This section does not preclude any organization formed after the approval of a project from maintaining an action pursuant to Section 21167 if a member of that organization has complied with subdivision (b).

(d) This section does not apply to the Attorney General.

(e) This section does not apply to any alleged grounds for noncompliance with this division for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing prior to the approval of the project, or if the public agency failed to give the notice required by law.

Title 14. California Code of Regulations
Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

As amended October 23, 2009

As directed by SB97, the Natural Resources Agency adopted Amendments to the CEQA Guidelines for greenhouse gas emissions on December 30, 2009. On February 16, 2010, the Office of Administrative Law approved the Amendments, and filed them with the Secretary of State for inclusion in the California Code of Regulations. The Amendments will become effective on March 18, 2010.The revisions are marked as follows: new additions are underlined and deletions are indicated by ~~strikeout~~.

Note: The numbered sections have been adopted by the Secretary of Resources as part of the California Code of Regulations.

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Article 1. General

SECTIONS 15000 TO 15007

15000. AUTHORITY

The regulations contained in this chapter are prescribed by the Secretary for Resources to be followed by all state and local agencies in California in the implementation of the California Environmental Quality Act. These Guidelines have been developed by the Office of Planning and Research for adoption by the Secretary for Resources in accordance with Section 21083. Additional information may be obtained by writing:

Secretary for Resources
1416 Ninth Street, Room 1311
Sacramento, CA 95814

These Guidelines are binding on all public agencies in California.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21082 and 21083, Public Resources Code; *City of Santa Ana v. City of Garden Grove*, (1979) 100 Cal. App. 3d 521.

15001. SHORT TITLE

These Guidelines may be cited as the "State CEQA Guidelines." Existing references to the "State EIR Guidelines" shall be construed to be references to the State CEQA Guidelines.

Note: Authority cited: Sections 21083, Public Resources Code; Reference: Section 21083, Public Resources Code.

15002. GENERAL CONCEPTS

(a) Basic Purposes of CEQA. The basic purposes of CEQA are to:

(1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.

(2) Identify the ways that environmental damage can be avoided or significantly reduced.

(3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.

(4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

(b) Governmental Action. CEQA applies to governmental action. This action may involve:

(1) Activities directly undertaken by a governmental agency,

(2) Activities financed in whole or in part by a governmental agency, or

(3) Private activities which require approval from a governmental agency.

(c) Private Action. Private action is not subject to CEQA unless the action involves governmental participation, financing, or approval.

(d) Project. A "project" is an activity subject to CEQA. The term "project" has been interpreted to mean far more than the ordinary dictionary definition of the term. (See: Section 15378.)

(e) Time for Compliance. A governmental agency is required to comply with CEQA procedures when the agency proposes to carry out or approve the activity. (See: Section 15004.)

(f) Environmental Impact Reports and Negative Declarations. An Environmental Impact Report (EIR) is the public document used by the governmental agency to analyze the significant environmental effects of a proposed project, to identify alternatives, and to disclose possible ways to reduce or avoid the possible environmental damage.

(1) An EIR is prepared when the public agency finds substantial evidence that the project may have a significant effect on the environment. (See: Section 15064(a)(1).)

(2) When the agency finds that there is no substantial evidence that a project may have a significant environmental effect, the agency will prepare a "Negative Declaration" instead of an EIR. (See: Section 15070.)

(g) Significant Effect on the Environment. A significant effect on the environment is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project. (See: Section 15382.) Further, when an EIR identifies a significant effect, the government agency approving the project must make findings on whether the adverse environmental effects have been substantially reduced or if not, why not. (See: Section 15091.)

(h) Methods for Protecting the Environment. CEQA requires more than merely preparing environmental documents. The EIR by itself does not control the way in which a project can be built or carried out. Rather, when an EIR shows that a project would cause substantial adverse changes in the environment, the governmental agency must respond to the information by one or more of the following methods:

(1) Changing a proposed project

(2) Imposing conditions on the approval of the project;

(3) Adopting plans or ordinances to control a broader class of projects to avoid the adverse changes;

(4) Choosing an alternative way of meeting the same need;

(5) Disapproving the project;

(6) Finding that changing or altering the project is not feasible;

(7) Finding that the unavoidable significant environmental damage is acceptable as provided in Section 15093.

(i) Discretionary Action. CEQA applies in situations where a governmental agency can use its judgment in deciding whether and how to carry out or approve a project. A project subject to such judgmental controls is called a "discretionary project." (See: Section 15357.)

(1) Where the law requires a governmental agency to act on a project in a set way without allowing the agency to use its own judgment, the project is called "ministerial," and CEQA does not apply. (See: Section 15369.)

(2) Whether an agency has discretionary or ministerial controls over a project depends on the authority granted by the law providing the controls over the activity. Similar projects may be subject to discretionary controls in one city or county and only ministerial controls in another. (See: Section 15268.)

(j) Public Involvement. Under CEQA, an agency must solicit and respond to comments from the public and other agencies concerned with the project. (See: Sections 15073, 15086, 15087, and 15088.)

(k) Three Step Process. An agency will normally take up to three separate steps in deciding which document to prepare for a project subject to CEQA.

(1) In the first step the Lead Agency examines the project to determine whether the project is subject to CEQA at all. If the project is exempt, the process does not need to proceed any farther. The agency may prepare a Notice of Exemption. (See: Sections 15061 and 15062.)

(2) If the project is not exempt, the Lead Agency takes the second step and conducts an Initial Study (Section 15063) to determine whether the project may have a significant effect on the environment. If the Initial Study shows that there is no substantial evidence that the project may have a significant effect, the Lead Agency prepares a Negative Declaration. (See: Sections 15070 et seq.)

(3) If the Initial Study shows that the project may have a significant effect, the Lead Agency takes the third step and prepares an EIR. (See: Sections 15080 et seq.)

(l) Certified Equivalent Programs. A number of environmental regulatory programs have been certified by the Secretary of the Resources Agency as involving essentially the same consideration of environmental issues as is provided by use of EIRs and Negative Declarations. Certified programs are exempt from preparing EIRs and Negative Declarations but use other documents instead. Certified programs are discussed in Article 17 and are listed in Section 15251.

(m) This section is intended to present the general concepts of CEQA in a simplified and introductory manner. If there are any conflicts between the short statement of a concept in this section and the provisions of other sections of these Guidelines, the other sections shall prevail.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21000–21177, Public Resources Code; *No Oil, Inc. v. City of Los Angeles*, (1974) 13 Cal. 3d 68; *Running Fence Corp. v. Superior Court*, (1975) 51 Cal. App. 3d 400.

15003. POLICIES

In addition to the policies declared by the Legislature concerning environmental protection and administration of CEQA in Sections 21000, 21001, 21002, and 21002.1 of the Public Resources Code, the courts of this state have declared the following policies to be implicit in CEQA:

(a) The EIR requirement is the heart of CEQA. (*County of Inyo v. Yorty,* 32 Cal. App. 3d 795.)

(b) The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected. (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795.)

(c) The EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project. (*No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68.)

(d) The EIR is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. (*People ex rel. Department of Public Works v. Bosio*, 47 Cal. App. 3d 495.)

(e) The EIR process will enable the public to determine the environmental and economic values of their elected and appointed officials thus allowing for appropriate action come election day should a majority of the voters disagree. (*People v. County of Kern*, 39 Cal. App. 3d 830.)

(f) CEQA was intended to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (*Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247.)

(g) The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. (*Bozung v. LAFCO* (1975) 13 Cal.3d 263)

(h) The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect. (*Citizens Assoc. For Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151)

(i) CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith effort at full disclosure. A court does not pass upon the correctness of an EIR's environmental conclusions, but only determines if the EIR is sufficient as an informational document. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692)

(j) CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement. (*Laurel Heights Improvement Assoc. v. Regents of U.C.* (1993) 6 Cal.4th 1112 and *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553)

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21000–21177, Public Resources Code.

15004. TIME OF PREPARATION

(a) Before granting any approval of a project subject to CEQA, every Lead Agency or Responsible Agency shall consider a final EIR or Negative Declaration or another document authorized by these Guidelines to be used in the place of an EIR or Negative Declaration. (See: The definition of "approval" in Section 15352.)

(b) Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

(1) With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. CEQA compliance should be completed prior to acquisition of a site for a public project.

(2) To implement the above principles, public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, agencies shall not:

(A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities, except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance.

(B) Otherwise take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.

(3) With private projects, the lead agency shall encourage the project proponent to incorporate environmental considerations into project conceptualization, design, and planning at the earliest feasible time.

(c) The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively. When the lead agency is a state agency, the environmental document shall be included as part of the regular project report if such a report is used in its existing review and budgetary process.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061 and 21105, Public Resources Code; *Friends of Mammoth v. Board of Supervisors*, (1972) 8 Cal.3d 247; *Mount Sutro Defense Committee v. Regents of the University of California*, (1978) 77 Cal.App.3d 20.

15005. TERMINOLOGY

The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21082 and 21083, Public Resources Code.

15006. REDUCING DELAY AND PAPERWORK

Public agencies should reduce delay and paperwork by:

(a) Integrating the CEQA process into early planning. (15004(c))

(b) Ensuring the swift and fair resolution of Lead Agency disputes. (15053)

(c) Identifying projects which fit within categorical exemptions and are therefore exempt from CEQA processing. (15300.4)

(d) Using Initial Studies to identify significant environmental issues and to narrow the scope of EIRs. (15063)

(e) Using a Negative Declaration when a project not otherwise exempt will not have a significant effect on the environment. (15070)

(f) Using a previously prepared EIR when it adequately addresses the proposed project. (15153)

(g) Consulting with state and local Responsible Agencies before and during preparation of an Environmental Impact Report so that the document will meet the needs of all the agencies which will use it. (15083)

(h) Urging applicants, either before or after the filing of an application, to revise projects to eliminate possible significant effects on the environment, thereby enabling the project to qualify for a Negative Declaration rather than an Environmental Impact Report. (15063(c)(2))

(i) Integrating CEQA requirements with other environmental review and consulting requirements. (Public Resources Code Section 21080.5)

(j) Eliminating duplication with federal procedures by providing for joint preparation of environmental documents with federal agencies and by adopting completed federal NEPA documents. (15227)

(k) Emphasizing consultation before an Environmental Impact Report is prepared, rather than submitting adversary comments on a completed document. (15082(b))

(l) Combining environmental documents with other documents such as general plans. (15166)

(m) Eliminating repetitive discussions of the same issues by using Environmental Impact Reports on programs, policies, or plans and tiering from reports of broad scope to those of narrower scope. (15152)

(n) Reducing the length of Environmental Impact Reports by means such as setting appropriate page limits. (15141)

(o) Preparing analytic rather than encyclopedic Environmental Impact Reports. (15142)

(p) Mentioning only briefly issues other than significant ones in EIRs. (15143)

(q) Writing Environmental Impact Reports in plain language. (15140)

(r) Following a clear format for Environmental Impact Reports. (15120)

(s) Emphasizing the portions of the Environmental Impact Report that are useful to decision makers and the public and reducing emphasis on background material. (15143)

(t) Using incorporation by reference. (15150)

(u) Making comments on Environmental Impact Reports as specific as possible. (15204)

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003 and 21083, Public Resources Code.

15007. AMENDMENTS

(a) These Guidelines will be amended from time to time to match new developments relating to CEQA.

(b) Amendments to the Guidelines apply prospectively only. New requirements in amendments will apply to steps in the CEQA process not yet undertaken by the date when agencies must comply with the amendments.

(c) If a document meets the content requirements in effect when the document is sent out for public review, the document shall not need to be revised to conform to any new content requirements in Guideline amendments taking effect before the document is finally approved.

(d) Public agencies shall comply with new requirements in amendments to the Guidelines beginning with the earlier of the following two dates:

  (1) The effective date of the agency's procedures amended to conform to the new Guideline amendments; or

  (2) The 120th day after the effective date of the Guideline amendments.

(e) Public agencies may implement any permissive or advisory elements of the Guidelines beginning with the effective date of the Guideline amendments.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21082--21086, Public Resources Code; *Stevens v. City of Glendale*, 125 Cal. App. 3d 986.

Article 2. General Responsibilities

SECTIONS 15020 TO 15025

15020. GENERAL

Each public agency is responsible for complying with CEQA and these Guidelines. A public agency must meet its own responsibilities under CEQA and shall not rely on comments from other public agencies or private citizens as a substitute for work CEQA requires the Lead Agency to accomplish. For example, a Lead Agency is responsible for the adequacy of its environmental documents. The Lead Agency shall not knowingly release a deficient document hoping that public comments will correct defects in the document.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21082 and 21082.1, Public Resources Code; *Russian Hill Improvement Association v. Board of Permit Appeals,* (1975) 44 Cal. App. 3d 158.

15021. DUTY TO MINIMIZE ENVIRONMENTAL DAMAGE AND BALANCE COMPETING PUBLIC OBJECTIVES

(a) CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible.

  (1) In regulating public or private activities, agencies are required to give major consideration to preventing environmental damage.

  (2) A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.

(b) In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors.

(c) The duty to prevent or minimize environmental damage is implemented through the findings required by Section 15091.

(d) CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian. An agency shall prepare a statement of overriding considerations as described in Section 15093 to reflect the ultimate balancing of competing public objectives when the agency decides to approve a project that will cause one or more significant effects on the environment.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Public Resources Code Sections 21000, 21001, 21002, 21002.1, and 21081; *San Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *Laurel Hills Homeowners Association v. City Council*, (1978) 83 Cal. App. 3d 515.

15022. PUBLIC AGENCY IMPLEMENTING PROCEDURES

(a) Each public agency shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents. The implementing procedures should contain at least provisions for:

(1) Identifying the activities that are exempt from CEQA. These procedures should contain:

(A) Provisions for evaluating a proposed activity to determine if there is no possibility that the activity may have a significant effect on the environment.

(B) A list of projects or permits over which the public agency has only ministerial authority.

(C) A list of specific activities which the public agency has found to be within the categorical exemptions established by these Guidelines.

(2) Conducting Initial Studies.

(3) Preparing Negative Declarations.

(4) Preparing draft and final EIRs.

(5) Consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

(6) Assuring adequate opportunity and time for public review and comment on the Draft EIR or Negative Declaration.

(7) Evaluating and responding to comments received on environmental documents.

(8) Assigning responsibility for determining the adequacy of an EIR or Negative Declaration.

(9) Reviewing and considering environmental documents by the person or decision-making body who will approve or disapprove a project.

(10) Filing documents required or authorized by CEQA and these Guidelines.

(11) Providing adequate comments on environmental documents which are submitted to the public agency for review.

(12) Assigning responsibility for specific functions to particular units of the public agency.

(13) Providing time periods for performing functions under CEQA.

(b) Any district, including a school district, need not adopt objectives, criteria, and procedures of its own if it uses the objectives, criteria, and procedures of another public agency whose boundaries are coterminous with or entirely encompass the district.

(c) Public agencies should revise their implementing procedures to conform to amendments to these Guidelines within 120 days after the effective date of the amendments. During the period while the public agency is revising its procedures, the agency must conform to any statutory changes in the California Environmental Quality Act that have become effective regardless of whether the public agency has revised its formally adopted procedures to conform to the statutory changes.

(d) In adopting procedures to implement CEQA, a public agency may adopt the State CEQA Guidelines through incorporation by reference. The agency may then adopt only those specific procedures or provisions described in subsection (a) which are necessary to tailor the general provisions of the Guidelines to the specific operations of the agency. A public agency may also choose to adopt a complete set of procedures identifying in one document all the necessary requirements.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21091, 21092, 21092.2, 21092.3, 21092.6, 21104, 21152, 21153 and 21161, Public Resources Code.

15023. OFFICE OF PLANNING AND RESEARCH (OPR)

(a) From time to time OPR shall review the State CEQA Guidelines and shall make recommendations for amendments to the Secretary for Resources.

(b) OPR shall receive and evaluate proposals for adoption, amendment, or repeal of categorical exemptions and shall make recommendations on the proposals to the Secretary for Resources.

People making suggestions concerning categorical exemptions shall submit their recommendations to OPR with supporting information to show that the class of projects in the proposal either will or will not have a significant effect on the environment.

(c) The State Clearinghouse in the Office of Planning and Research shall be responsible for distributing environmental documents to state agencies, departments, boards, and commissions for review and comment.

(d) Upon request of a Lead Agency or a project applicant, OPR shall provide assistance in identifying the various responsible agencies and any federal agencies which have responsibility for carrying out or approving a proposed project.

(e) OPR shall ensure that state Responsible Agencies provide the necessary information to Lead Agencies in response to Notices of Preparation within, at most, 30 days after receiving a Notice of Preparation.

(f) OPR shall resolve disputes as to which agency is the Lead Agency for a project.

(g) OPR shall receive and file all notices of completion, determination, and exemption.

(h) OPR shall establish and maintain a database for the collection, storage, retrieval, and dissemination of notices of exemption, notices of preparation, notices of determination, and notices of completion provided to the office. This database of notice information shall be available through the Internet.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.4, 21083, 21086, 21087, 21108, 21159.9 and 21161, Public Resources Code.

15024. SECRETARY FOR RESOURCES

(a) The Guidelines shall be adopted by the Secretary for Resources. The Secretary shall make a finding that each class of projects given a categorical exemption will not have a significant effect on the environment.

(b) The Secretary may issue amendments to these Guidelines.

(c) The Secretary shall certify state environmental regulatory programs which meet the standards for certification in Section 21080.5, Public Resources Code.

(d) The Secretary shall receive and file notices required by certified state environmental regulatory programs.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080.5, 21083, 21084, 21086, 21088, and 21152, Public Resources Code.

15025. DELEGATION OF RESPONSIBILITIES

(a) A public agency may assign specific functions to its staff to assist in administering CEQA. Functions which may be delegated include but are not limited to:

(1) Determining whether a project is exempt.

(2) Conducting an Initial Study and deciding whether to prepare a draft EIR or Negative Declaration.

(3) Preparing a Negative Declaration or EIR.

(4) Determining that a Negative Declaration has been completed within a period of 180 days.

(5) Preparing responses to comments on environmental documents.

(6) Filing of notices.

(b) The decision-making body of a public agency shall not delegate the following functions:

(1) Reviewing and considering a final EIR or approving a Negative Declaration prior to approving a project.

(2) The making of findings as required by Sections 15091 and 15093.

(c) Where an advisory body such as a planning commission is required to make a recommendation on a project to the decision-making body, the advisory body shall also review and consider the EIR or Negative Declaration in draft or final form.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21082, 21100.2 and 21151.5, Public Resources Code; *Kleist v. City of Glendale*, (1976) 56 Cal. App. 3d 770.

Article 3. Authorities Granted to Public Agencies by CEQA

SECTIONS 15040 TO 15045

15040. AUTHORITY PROVIDED BY CEQA

(a) CEQA is intended to be used in conjunction with discretionary powers granted to public agencies by other laws.

(b) CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws.

(c) Where another law grants an agency discretionary powers, CEQA supplements those discretionary powers by authorizing the agency to use the discretionary powers to mitigate or avoid significant effects on the environment when it is feasible to do so with respect to projects subject to the powers of the agency. Prior to January 1, 1983, CEQA provided implied authority for an agency to use its discretionary powers to mitigate or avoid significant effects on the environment. Effective January 1, 1983, CEQA provides express authority to do so.

(d) The exercise of the discretionary powers may take forms that had not been expected before the enactment of CEQA, but the exercise must be within the scope of the power.

(e) The exercise of discretionary powers for environmental protection shall be consistent with express or implied limitations provided by other laws.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21000, 21001, 21002, 21002.1, and 21004, Public Resources Code; Section 4, Chapter 1438, Statutes of 1982; *Golden Gate Bridge, etc., District v. Muzzi*, (1978) 83 Cal. App. 3d 707; *E.D.F. v. Mathews*, 410 F. Supp. 366, 339 (D.D.C., 1976); *Friends of Mammoth v. Board of Supervisors*, (1972) 8 Cal. 3d 247; *Pinewood Investors v. City of Oxnard*, (1982) 133 Cal. App. 3d 1030.

15041. AUTHORITY TO MITIGATE

Within the limitations described in Section 15040:

(a) A lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825, *Dolan v. City of Tigard*, (1994) 512 U.S. 374, *Ehrlich v. City of Culver City*, (1996) 12 Cal. 4th 854.).

(b) When a public agency acts as a Responsible Agency for a project, the agency shall have more limited authority than a Lead Agency. The Responsible Agency may require changes in a project to lessen or avoid only the effects, either direct or indirect, of that part of the project which the agency will be called on to carry out or approve.

(c) With respect to a project which includes housing development, a Lead or Responsible Agency shall not reduce the proposed number of housing units as a mitigation measure or alternative to lessen a particular significant effect on the environment if that agency determines that there is

another feasible, specific mitigation measure or alternative that would provide a comparable lessening of the significant effect.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002, 21002.1, and 21159.26, Public Resources Code; *Golden Gate Bridge, etc., District v. Muzzi*, 83 Cal. App. 3d 707.

15042. AUTHORITY TO DISAPPROVE PROJECTS

A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed. A Lead Agency has broader authority to disapprove a project than does a Responsible Agency. A Responsible Agency may refuse to approve a project in order to avoid direct or indirect environmental effects of that part of the project which the Responsible Agency would be called on to carry out or approve. For example, an air quality management district acting as a Responsible Agency would not have authority to disapprove a project for water pollution effects that were unrelated to the air quality aspects of the project regulated by the district.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002 and 21002.1, Public Resources Code; *Friends of Mammoth v. Mono County*, 8 Cal. App. 3d 247; *San Diego Trust and Savings Bank v. Friends of Gill*, 121 Cal. App. 3d 203.

15043. AUTHORITY TO APPROVE PROJECTS DESPITE SIGNIFICANT EFFECTS

A public agency may approve a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:

(a) There is no feasible way to lessen or avoid the significant effect (see Section 15091); and

(b) Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project. (See: Section 15093.)

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002 and 21002.1, Public Resources Code; *San Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *San Diego Trust & Savings Bank v. Friends of Gill*, (1981) 121 Cal. App. 3d 203.

15044. AUTHORITY TO COMMENT

Any person or entity other than a Responsible Agency may submit comments to a Lead Agency concerning any environmental effects of a project being considered by the Lead Agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21000, 21001, 21002.1, 21104, and 21153, Public Resources Code.

15045. FEES

(a) For a project to be carried out by any person or entity other than the lead agency, the lead agency may charge and collect a reasonable fee from the person or entity proposing the project in order to recover the estimated costs incurred in preparing environmental documents and for procedures necessary to comply with CEQA on the project. Litigation expenses, costs and fees incurred in actions alleging noncompliance with CEQA are not recoverable under this section.

(b) Public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

Note: Authority: Section 21083, Public Resources Code. Reference: Section 21089 and 21105, Public Resources Code.

Article 4. Lead Agency

SECTIONS 15050 TO 15053

15050. LEAD AGENCY CONCEPT

(a) Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing an EIR or Negative Declaration for the project. This agency shall be called the Lead Agency.

(b) Except as provided in subdivision (c), the decision-making body of each Responsible Agency shall consider the Lead Agency's EIR or Negative Declaration prior to acting upon or approving the project. Each Responsible Agency shall certify that its decision-making body reviewed and considered the information contained in the EIR or Negative Declaration on the project.

(c) The determination of the Lead Agency of whether to prepare an EIR or a Negative Declaration shall be final and conclusive for all persons, including Responsible Agencies, unless:

(1) The decision is successfully challenged as provided in Section 21167 of the Public Resources Code,

(2) Circumstances or conditions changed as provided in Section 15162, or

(3) A Responsible Agency becomes a Lead Agency under Section 15052.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080.1, 21165, and 21167.2, Public Resources Code.

15051. CRITERIA FOR IDENTIFYING THE LEAD AGENCY

Where two or more public agencies will be involved with a project, the determination of which agency will be the Lead Agency shall be governed by the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the Lead Agency even if the project would be located within the jurisdiction of another public agency.

(b) If the project is to be carried out by a nongovernmental person or entity, the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The Lead Agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

(2) Where a city prezones an area, the city will be the appropriate Lead Agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the prezoning. The Local Agency Formation Commission shall act as a Responsible Agency.

(c) Where more than one public agency equally meet the criteria in subdivision (b), the agency which will act first on the project in question shall be the Lead Agency.

(d) Where the provisions of subdivision (a), (b), and (c) leave two or more public agencies with a substantial claim to be the Lead Agency, the public agencies may by agreement designate an agency as the Lead Agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21165, Public Resources Code.

15052. SHIFT IN LEAD AGENCY DESIGNATION

(a) Where a Responsible Agency is called on to grant an approval for a project subject to CEQA for which another public agency was the appropriate Lead Agency, the Responsible Agency shall assume the role of the Lead Agency when any of the following conditions occur:

(1) The Lead Agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.

(2) The Lead Agency prepared environmental documents for the project, but the following conditions occur:

(A) A subsequent EIR is required pursuant to Section 15162,

(B) The Lead Agency has granted a final approval for the project, and

(C) The statute of limitations for challenging the Lead Agency's action under CEQA has expired.

(3) The Lead Agency prepared inadequate environmental documents without consulting with the Responsible Agency as required by Sections 15072 or 15082, and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.

(b) When a Responsible Agency assumes the duties of a Lead Agency under this section, the time limits applicable to a Lead Agency shall apply to the actions of the agency assuming the Lead Agency duties.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21165, Public Resources Code.

15053. DESIGNATION OF LEAD AGENCY BY THE OFFICE OF PLANNING AND RESEARCH

(a) If there is a dispute over which of several agencies should be the Lead Agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to the Office of Planning and Research. If an agreement cannot be reached, any of the disputing public agencies, or the applicant if a private project is involved, may submit the dispute to the Office of Planning and Research for resolution.

(b) For purposes of this section, a "dispute" means a contested, active difference of opinion between two or more public agencies as to which of those agencies shall prepare any necessary environmental document. A dispute exists where each of those agencies claims that it either has or does not have the obligation to prepare that environmental document.

(c) The Office of Planning and Research shall designate a Lead Agency within 21 days after receiving a completed request to resolve a dispute. The Office of Planning and Research shall not designate a lead agency in the absence of a dispute.

(d) Regulations adopted by the Office of Planning and Research for resolving Lead Agency disputes may be found in Title 14, California Code of Regulations, Sections 16000 et seq.

(e) Designation of a Lead Agency by the Office of Planning and Research shall be based on consideration of the criteria in Section 15051 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21165, Public Resources Code; California Code of Regulations, Title 14, Sections 16000–16041.

Article 5. Preliminary Review of Projects and Conduct of Initial Study

SECTIONS 15060 TO 15065

15060. PRELIMINARY REVIEW

(a) A lead agency is allowed 30 days to review for completeness applications for permits or other entitlements for use. While conducting this review for completeness, the agency should be alert for environmental issues that might require preparation of an EIR or that may require additional explanation by the applicant. Accepting an application as complete does not limit the authority of the lead agency to require the applicant to submit additional information needed for environmental evaluation of the project. Requiring such additional information after the application is complete does not change the status of the application.

(b) Except as provided in Section 15111, the lead agency shall begin the formal environmental evaluation of the project after accepting an application as complete and determining that the project is subject to CEQA.

(c) Once an application is deemed complete, a lead agency must first determine whether an activity is subject to CEQA before conducting an initial study. An activity is not subject to CEQA if:

(1) The activity does not involve the exercise of discretionary powers by a public agency;

(2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or

(3) The activity is not a project as defined in Section 15378.

(d) If the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process described in Article 9, commencing with Section 15080. In the absence of an initial study, the lead agency shall still focus the EIR on the significant effects of the project and indicate briefly its reasons for determining that other effects would not be significant or potentially significant.

Authority: Sections 21083, Public Resources Code; Reference: Sections 21080(b), 21080.2 and 21160, Public Resources Code.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 65944, Government Code; Section 21080.2, Public Resources Code.

15060.5. PREAPPLICATION CONSULTATION

(a) For a potential project involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the lead agency shall, upon the request of a potential applicant and prior to the filing of a formal application, provide for consultation with the potential applicant to consider the range of actions, potential alternatives, mitigation measures, and any potential significant effects on the environment of the potential project.

(b) The lead agency may include in the consultation one or more responsible agencies, trustee agencies, and other public agencies who in the opinion of the lead agency may have an interest in the proposed project. The lead agency may consult the Office of Permit Assistance in the Trade and Commerce Agency for help in identifying interested agencies.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080.1, Public Resources Code.

15061. REVIEW FOR EXEMPTION

(a) Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.

(b) A project is exempt from CEQA if:

(1) The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260).

(2) The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.

(3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

(4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)).

(5) The project is exempt pursuant to the provisions of Article 12.5 of this Chapter.

(c) Each public agency should include in its implementing procedures a listing of the projects often handled by the agency that the agency has determined to be exempt. This listing should be used in preliminary review.

(d) After determining that a project is exempt, the agency may prepare a Notice of Exemption as provided in Section 15062. Although the notice may be kept with the project application at this time, the notice shall not be filed with the Office of Planning and Research or the county clerk until the project has been approved.

(e) When a non-elected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, the decision that the project is exempt may be appealed to the local lead agency's elected decisionmaking body, if one exists. A local lead agency may establish procedures governing such appeals.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b), 21151, 21152(b), and 21159.21, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68.

15062. NOTICE OF EXEMPTION

(a) When a public agency decides that a project is exempt from CEQA pursuant to Section 15061, and the public agency approves or determines to carry out the project, the agency may file a Notice of Exemption. The notice shall be filed, if at all, after approval of the project. Such a notice shall include:

(1) A brief description of the project,

(2) The location of the project (either by street address and cross street for a project in an urbanized area or by attaching a specific map, preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name).

(3) A finding that the project is exempt from CEQA, including a citation to the State Guidelines section or statute under which it is found to be exempt, and

(4) A brief statement of reasons to support the finding.

(b) A Notice of Exemption may be filled out and may accompany the project application through the approval process. The notice shall not be filed with the county clerk or the OPR until the project has been approved.

(c) When a public agency approves an applicant's project, either the agency or the applicant may file a Notice of Exemption.

(1) When a state agency files this notice, the notice of exemption shall be filed with the Office of Planning and Research. A form for this notice is provided in Appendix E. A list of all such notices shall be posted on a weekly basis at the Office of Planning and Research, 1400

Tenth Street, Sacramento, California. The list shall remain posted for at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.

(2) When a local agency files this notice, the notice of exemption shall be filed with the county clerk of each county in which the project will be located. Copies of all such notices shall be available for public inspection and such notices shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 12 months

(3) All public agencies are encouraged to make postings pursuant to this section available in electronic format on the Internet. Such electronic postings are in addition to the procedures required by these guidelines and the Public Resources Code.

(4) When an applicant files this notice, special rules apply.

(A) The notice filed by an applicant is filed in the same place as if it were filed by the agency granting the permit. If the permit was granted by a state agency, the notice is filed with the Office of Planning and Research. If the permit was granted by a local agency, the notice is filed with the county clerk of the county or counties in which the project will be located.

(B) The Notice of Exemption filed by an applicant shall contain the information required in subdivision (a) together with a certified document issued by the public agency stating that the agency has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the public agency.

(C) A notice filed by an applicant is subject to the same posting and time requirements as a notice filed by a public agency.

(d) The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

(e) When a local agency determines that a project is not subject to CEQA under sections 15193, 15194, or 15195, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file a notice with OPR identifying the section under which the exemption is claimed.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

15063. INITIAL STUDY

(a) Following preliminary review, the Lead Agency shall conduct an Initial Study to determine if the project may have a significant effect on the environment. If the Lead Agency can determine that an EIR will clearly be required for the project, an Initial Study is not required but may still be desirable.

(1) All phases of project planning, implementation, and operation must be considered in the Initial Study of the project.

(2) To meet the requirements of this section, the lead agency may use an environmental assessment or a similar analysis prepared pursuant to the National Environmental Policy Act.

(3) An initial study may rely upon expert opinion supported by facts, technical studies or other substantial evidence to document its findings. However, an initial study is neither intended nor required to include the level of detail included in an EIR.

(b) Results.

(1) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the Lead Agency shall do one of the following:

(A) Prepare an EIR, or

(B) Use a previously prepared EIR which the Lead Agency determines would adequately analyze the project at hand, or

(C) Determine, pursuant to a program EIR, tiering, or another appropriate process, which of a project's effects were adequately examined by an earlier EIR or negative declaration. Another appropriate process may include, for example, a master EIR, a master environmental assessment, approval of housing and neighborhood commercial facilities in urban areas, approval of residential projects pursuant to a specific plans described in section 15182, approval of residential projects consistent with a community plan, general plan or zoning as described in section 15183, or an environmental document prepared under a State certified regulatory program. The lead agency shall then ascertain which effects, if any, should be analyzed in a later EIR or negative declaration.

(2) The Lead Agency shall prepare a Negative Declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

(c) Purposes. The purposes of an Initial Study are to:

(1) Provide the Lead Agency with information to use as the basis for deciding whether to prepare an EIR or a Negative Declaration.

(2) Enable an applicant or Lead Agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a Negative Declaration.

(3) Assist in the preparation of an EIR, if one is required, by:

(A) Focusing the EIR on the effects determined to be significant,

(B) Identifying the effects determined not to be significant,

(C) Explaining the reasons for determining that potentially significant effects would not be significant, and

(D) Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs;

(7) Determine whether a previously prepared EIR could be used with the project.

(d) Contents. An Initial Study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier EIR or negative declaration. A reference to another document should include, where appropriate, a citation to the page or pages where the information is found.

(4) A discussion of the ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the Initial Study.

(e) Submission of Data. If the project is to be carried out by a private person or private organization, the Lead Agency may require such person or organization to submit data and information which will enable the Lead Agency to prepare the Initial Study. Any person may submit any information in any form to assist a Lead Agency in preparing an Initial Study.

(f) Format. Sample forms for an applicant's project description and a review form for use by the lead agency are contained in Appendices G and H. When used together, these forms would meet the requirements for an initial study, provided that the entries on the checklist are briefly explained pursuant to subdivision (d)(3). These forms are only suggested, and public agencies are free to devise their own format for an initial study. A previously prepared EIR may also be used as the initial study for a later project.

(g) Consultation. As soon as a Lead Agency has determined that an Initial Study will be required for the project, the Lead Agency shall consult informally with all Responsible Agencies and all Trustee Agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a Negative Declaration should be prepared. During or immediately after preparation of an Initial Study for a private project, the Lead Agency may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the Initial Study.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21100 and 21151, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

15064. DETERMINING THE SIGNIFICANCE OF THE ENVIRONMENTAL EFFECTS CAUSED BY A PROJECT

(a) Determining whether a project may have a significant effect plays a critical role in the CEQA process.

(1) If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.

(2) When a final EIR identifies one or more significant effects, the Lead Agency and each Responsible Agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project.

(b) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(c) In determining whether an effect will be adverse or beneficial, the Lead Agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the Lead Agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

(1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.

(2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

(3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

(e) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(f) The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.

(1) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (*Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68).

(2) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but the lead agency determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared.

(3) If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (*Friends of B Street v. City of Hayward* (1980) 106 Cal.App. 3d 988).

(4) The existence of public controversy over the environmental effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.

(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.

(6) Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.

(7) The provisions of sections 15162, 15163, and 15164 apply when the project being analyzed is a change to, or further approval for, a project for which an EIR or negative declaration was previously certified or adopted (e.g. a tentative subdivision, conditional use permit). Under case law, the fair argument standard does not apply to determinations of significance pursuant to sections 15162, 15163, and 15164.

(g) After application of the principles set forth above in Section 15064(f)(g), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

(h) (1) When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(2) A lead agency may determine in an initial study that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. When a project might contribute to a significant cumulative impact, but the contribution will be rendered less than cumulatively considerable through mitigation measures set forth in a mitigated negative declaration, the initial study shall briefly indicate and explain how the contribution has been rendered less than cumulatively considerable.

(3) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program (including, but not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions) that ~~which~~ provides specific requirements that will avoid or substantially lessen the cumulative problem ~~(e.g., water quality control plan, air quality plan, integrated waste management plan)~~ within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project

complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.

(4) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083, 21083.05, and 21100, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68; *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

15064.4. DETERMINING THE SIGNIFICANCE OF IMPACTS FROM GREENHOUSE GAS EMISSIONS

(a) The determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency shall have discretion to determine, in the context of a particular project, whether to:

(1) Use a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use. The lead agency has discretion to select the model or methodology it considers most appropriate provided it supports its decision with substantial evidence. The lead agency should explain the limitations of the particular model or methodology selected for use; and/or

(2) Rely on a qualitative analysis or performance based standards.

(b) A lead agency should consider the following factors, among others, when assessing the significance of impacts from greenhouse gas emissions on the environment:

(1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;

(2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.

(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Sections 21001, 21002, 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083.05, 21100, Pub. Resources Code; *Eureka Citizens for Responsible Govt. v. City of Eureka* (2007) 147 Cal.App.4th 357; *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98; *Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm.* (2001) 91 Cal.App.4th 1344; and *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868.

15064.5. DETERMINING THE SIGNIFICANCE OF IMPACTS TO ARCHEOLOGICAL AND HISTORICAL RESOURCES

(a) For purposes of this section, the term "historical resources" shall include the following:

(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code §5024.1, Title 14 CCR, Section 4850 et seq.).

(2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code §5024.1, Title 14 CCR, Section 4852) including the following:

(A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

(B) Is associated with the lives of persons important in our past;

(C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

(D) Has yielded, or may be likely to yield, information important in prehistory or history.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code,

unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

(3) Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.

(4) A lead agency shall identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

(5) When a project will affect state-owned historical resources, as described in Public Resources Code Section 5024, and the lead agency is a state agency, the lead agency shall consult with the State Historic Preservation Officer as provided in Public Resources Code Section 5024.5. Consultation should be coordinated in a timely fashion with the preparation of environmental documents.

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subdivision (a).

(2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.

(3) If an archaeological site does not meet the criteria defined in subdivision (a), but does meet the definition of a unique archeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c–f) do not apply to surveys and site evaluation activities intended to determine whether the project location contains unique archaeological resources.

(4) If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

(d) When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate Native Americans as identified by the Native American Heritage Commission as provided in Public Resources Code Section 5097.98. The applicant may develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American burials with the appropriate Native Americans as identified by the Native American Heritage Commission. Action implementing such an agreement is exempt from:

(1) The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5).

(2) The requirements of CEQA and the Coastal Act.

(e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:

(1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

(A) The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and

(B) If the coroner determines the remains to be Native American:

1. The coroner shall contact the Native American Heritage Commission within 24 hours.

2. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased Native American.

3. The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or

(2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.

(A) The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.

(B) The descendant identified fails to make a recommendation; or

(C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(f) As part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.

Note: Authority: Section 21083, Public Resources Code. Reference: Sections 21083.2, 21084, and 21084.1, Public Resources Code; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 490.

15064.7. THRESHOLDS OF SIGNIFICANCE.

(a) Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.

(b) Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.

(c) When adopting thresholds of significance, a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts, provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000, 21082 and 21083, Public Resources Code.

15065. MANDATORY FINDINGS OF SIGNIFICANCE

(a) A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur:

(1) The project has the potential to*:* substantially degrade the quality of the environment*;* substantially reduce the habitat of a fish or wildlife species*;* cause a fish or wildlife population to drop below self-sustaining levels*;* threaten to eliminate a plant or animal community*;* substantially reduce the number or restrict the range of an endangered, rare or threatened species*;* or eliminate important examples of the major periods of California history or prehistory.

(2) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(3) The project has possible environmental effects that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(4) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

(b) (1) Where, prior to the commencement of ~~preliminary~~ public review of an environmental document, a project proponent agrees to mitigation measures or project modifications that would avoid any significant effect on the environment specified by subdivision (a) or would mitigate the significant effect to a point where clearly no significant effect on the environment would occur, a lead agency need not prepare an environmental impact report solely because, without mitigation, the environmental effects at issue would have been significant.

(2) Furthermore, where a proposed project has the potential to substantially reduce the number or restrict the range of an endangered, rare or threatened species, the lead agency need not prepare an EIR solely because of such an effect, if:

(A) the project proponent is bound to implement mitigation requirements relating to such species and habitat pursuant to an approved habitat conservation plan or natural community conservation plan;

(B) the state or federal agency approved the habitat conservation plan or natural community conservation plan in reliance on an environmental impact report or environmental impact statement; and

(C) 1. such requirements avoid any net loss of habitat and net reduction in number of the affected species, or

2. such requirements preserve, restore, or enhance sufficient habitat to mitigate the reduction in habitat and number of the affected species to below a level of significance.

(c) Following the decision to prepare an EIR, if a lead agency determines that any of the conditions specified by subdivision (a) will occur, such a determination shall apply to:

(1) the identification of effects to be analyzed in depth in the environmental impact report or the functional equivalent thereof,

(2) the requirement to make detailed findings on the feasibility of alternatives or mitigation measures to substantially lessen or avoid the significant effects on the environment,

(3) when found to be feasible, the making of changes in the project to substantially lessen or avoid the significant effects on the environment, and

(4) where necessary, the requirement to adopt a statement of overriding considerations.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21001(c), *21082.2,* and 21083, Public Resources Code; *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th *608; Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1024; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

Article 6. Negative Declaration Process

SECTIONS 15070 TO 15075

15070. DECISION TO PREPARE A NEGATIVE OR MITIGATED NEGATIVE DECLARATION

A public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

(a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or

(b) The initial study identifies potentially significant effects, but:

(1) Revisions in the project plans or proposals made by, or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

(2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21064, 21064.5, 21080(c), and 21082.1, Public Resources Code; *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988; *Running Fence Corp. v. Superior Court* (1975) 51 Cal.App.3d 400.

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A Negative Declaration circulated for public review shall include:

(a) A brief description of the project, including a commonly used name for the project, if any;

(b) The location of the project, preferably shown on a map, and the name of the project proponent;

(c) A proposed finding that the project will not have a significant effect on the environment;

(d) An attached copy of the Initial Study documenting reasons to support the finding; and

(e) Mitigation measures, if any, included in the project to avoid potentially significant effects.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(c), Public Resources Code.

15072. NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

(a) A lead agency shall provide a notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located, sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under Section 15105.

(b) The lead agency shall mail a notice of intent to adopt a negative declaration or mitigated negative declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing and shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by at least one of the following procedures to allow the public the review period provided under Section 15105:

(1) Publication at least one time by the lead agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the lead agency on and off site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(c) The alternatives for providing notice specified in subdivision (b) shall not preclude a lead agency from providing additional notice by other means if the agency so desires, nor shall the requirements of this section preclude a lead agency from providing the public notice at the same time and in the same manner as public notice required by any other laws for the project.

(d) The county clerk of each county within which the proposed project is located shall post such notices in the office of the county clerk within 24 hours of receipt for a period of at least 20 days.

(e) For a project of statewide, regional, or areawide significance, the lead agency shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within 10 miles of the project site.

(f) If the United States Department of Defense or any branch of the United States Armed Forces has given a lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the military contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of intent to adopt a negative declaration or a mitigated negative declaration pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5. The lead agency shall send the specified military contact office such notice of intent sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the military service the review period provided under Section 15105.

(g) A notice of intent to adopt a negative declaration or mitigated negative declaration shall specify the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration or mitigated negative declaration. This shall include starting and ending dates for the review period. If the review period has been is shortened pursuant to Section 15105, the notice shall include a statement to that effect.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.

(4) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15070(b) and all documents referenced in the proposed negative declaration or mitigated negative declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency's normal working hours.

(5) The presence of the site on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subdivision (f) of that section.

(6) Other information specifically required by statute or regulation for a particular project or type of project.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21091, 21092, 21092.2, 21092.4, 21092.3, 21092.6, 21098 and 21151.8, Public Resources Code.

15073. PUBLIC REVIEW OF A PROPOSED NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

(a) The lead agency shall provide a public review period pursuant to Section 15105 of not less than 20 days. When a proposed negative declaration or mitigated negative declaration and initial study are submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period is approved by the State Clearinghouse under Section 15105(d).

(b) When a proposed negative declaration or mitigated negative declaration and initial study have been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse. The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

(c) A copy of the proposed negative declaration or mitigated negative declaration and the initial study shall be attached to the notice of intent to adopt the proposed declaration that is sent to every responsible agency and trustee agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project.

(d) Where one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction by law over natural resources affected by the project, or where the project is of statewide, regional, or areawide environmental significance, the lead agency shall send copies of the proposed negative declaration or mitigated negative declaration to the State Clearinghouse for distribution to state agencies.

(e) The lead agency shall notify in writing any public agency which comments on a proposed negative declaration or mitigated negative declaration of any public hearing to be held for the project for which the document was prepared. A notice provided to a public agency pursuant to Section 15072 satisfies this requirement.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21000(e), 21003(b), 21080(c), 21081.6, 21091, and 21092.5, Public Resources Code; *Plaggmier v. City of San Jose* (1980) 101 Cal.App.3d 842.

15073.5. RECIRCULATION OF A NEGATIVE DECLARATION PRIOR TO ADOPTION.

(a) A lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. Notice of recirculation shall comply with Sections 15072 and 15073.

(b) A "substantial revision" of the negative declaration shall mean:

(1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or

(2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

(c) Recirculation is not required under the following circumstances:

(1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.

(2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.

(3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.

(4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

(d) If during the negative declaration process there is substantial evidence in light of the whole record, before the lead agency that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided, the lead agency shall prepare a draft EIR and certify a final EIR prior to approving the project. It shall circulate the draft EIR for consultation and review pursuant to Sections 15086 and 15087, and advise reviewers in writing that a proposed negative declaration had previously been circulated for the project.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337; *Long Beach Savings and Loan Assn. v. Long Beach Redevelopment Agency* (1986) 188 Cal.App.3d 249.

15074. CONSIDERATION AND ADOPTION OF A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

(a) Any advisory body of a public agency making a recommendation to the decision-making body shall consider the proposed negative declaration or mitigated negative declaration before making its recommendation.

(b) Prior to approving a project, the decision-making body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decision-making body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that

the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis.

(c) When adopting a negative declaration or mitigated negative declaration, the lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(d) When adopting a mitigated negative declaration, the lead agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects.

(e) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted, for a project within two nautical miles of a public airport or public use airport, without first considering whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

(f) When a non-elected official or decisionmaking body of a local lead agency adopts a negative declaration or mitigated negative declaration, that adoption may be appealed to the agency's elected decisionmaking body, if one exists. For example, adoption of a negative declaration for a project by a city's planning commission may be appealed to the city council. A local lead agency may establish procedures governing such appeals.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080(c), 21081.6, 21082.1, 21096, and 21151, Public Resources Code; *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988.

15074.1. SUBSTITUTION OF MITIGATION MEASURES IN A PROPOSED MITIGATED NEGATIVE DECLARATION.

(a) As a result of the public review process for a proposed mitigated negative declaration, including any administrative decisions or public hearings conducted on the project prior to its approval, the lead agency may conclude that certain mitigation measures identified in the mitigated negative declaration are infeasible or otherwise undesirable. Prior to approving the project, the lead agency may, in accordance with this section, delete those mitigation measures and substitute for them other measures which the lead agency determines are equivalent or more effective.

(b) Prior to deleting and substituting for a mitigation measure, the lead agency shall do both of the following:

(1) Hold a public hearing on the matter. Where a public hearing is to be held in order to consider the project, the public hearing required by this section may be combined with that hearing. Where no public hearing would otherwise be held to consider the project, then a public hearing shall be required before a mitigation measure may be deleted and a new measure adopted in its place.

(2) Adopt a written finding that the new measure is equivalent or more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment.

(c) No recirculation of the proposed mitigated negative declaration pursuant to Section 15072 is required where the new mitigation measures are made conditions of, or are otherwise incorporated into, project approval in accordance with this section.

(d) "Equivalent or more effective" means that the new measure will avoid or reduce the significant effect to at least the same degree as, or to a greater degree than, the original measure and will create no more adverse effect of its own than would have the original measure.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(f), Public Resources Code.

15075. NOTICE OF DETERMINATION ON A PROJECT FOR WHICH A PROPOSED NEGATIVE OR MITIGATED NEGATIVE DECLARATION HAS BEEN APPROVED.

(a) The lead agency shall file a notice of determination within five working days after deciding to carry out or approve the project. For projects with more than one phase, the lead agency shall file a notice of determination for each phase requiring a discretionary approval.

(b) The notice of determination shall include:

(1) An identification of the project including the project title as identified on the proposed negative declaration, its location, and the State Clearinghouse identification number for the proposed negative declaration if the notice of determination is filed with the State Clearinghouse.

(2) A brief description of the project.

(3) The agency's name and the date on which the agency approved the project.

(4) The determination of the agency that the project will not have a significant effect on the environment.

(5) A statement that a negative declaration or a mitigated negative declaration was adopted pursuant to the provisions of CEQA.

(6) The statement indicating whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted.

(7) The address where a copy of the negative declaration or mitigated negative declaration may be examined.

(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with the Office of Planning and Research within five working days after approval of the project by the lead agency.

(d) If the lead agency is a local agency, the local lead agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located, within five working days after approval of the project by the lead agency. If the project requires discretionary approval from any state agency, the local lead agency shall also, within five working days of this approval, file a copy of the notice of determination with the Office of Planning and Research.

(e) A notice of determination filed with the county clerk shall be available for public inspection and shall be posted by the county clerk within 24 hours of receipt for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period during which it was posted. The local lead agency shall retain the notice for not less than 12 months.

(f) A notice of determination filed with the Office of Planning and Research shall be available for public inspection and shall be posted for a period of at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 moths.

(g) The filing of the notice of determination pursuant to subdivision (c) above for state agencies and the filing and posting of the notice of determination pursuant to subdivisions (d) and (e) above for local agencies, start a 30-day statute of limitations on court challenges to the approval under CEQA.

(h) A sample notice of determination is provided in Appendix D. Each public agency may devise its own form, but the minimum content requirements of subdivision (b) above shall be met. Public agencies are encouraged to make copies of all notices filed pursuant to this section

available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of these guidelines and the Public Resources Code.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(c), 21108(a) and (c), 21152(a) and (c) and 21167(b), Public Resources Code; *Citizens of Lake Murray Area Association* v. *City Council* (1982) 129 Cal. App. 3d 436.

Article 7. EIR Process

SECTIONS 15080 TO 15097

15080. GENERAL

To the extent possible, the EIR process should be combined with the existing planning, review, and project approval process used by each public agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, 21100, and 21151, Public Resources Code.

15081. DECISION TO PREPARE AN EIR

The EIR process starts with the decision to prepare an EIR. This decision will be made either during preliminary review under Section 15060 or at the conclusion of an Initial Study after applying the standards described in Section 15064.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21100, Public Resources Code; *No Oil, Inc. v. City of Los Angeles*, (1974) 13 Cal. 3d 68; *Friends of B Street v. City of Hayward*, (1980) 106 Cal. App. 3d 988.

15081.5 EIRS REQUIRED BY STATUTE

(a) A lead agency shall prepare or have prepared an EIR for the following types of projects. An initial study may be prepared to help identify the significant effects of the project.

(1) The burning of municipal wastes, hazardous wastes, or refuse-derived fuel, including but not limited to tires, if the project is either:

(A) The construction of a new facility; or

(B) The expansion of an existing facility that burns hazardous waste that would increase its permitted capacity by more than 10 percent. This does not apply to any project exclusively burning hazardous waste for which a determination to prepare a negative declaration, or mitigated negative declaration or environmental impact report was made prior to July 14, 1989. The amount of expansion of an existing facility is calculated pursuant to subdivision (b) of Section 21151.1 of the Public Resources Code.

(C) Subdivision (1) of this subdivision does not apply to:

1. Projects for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code.

2. Any of the types of burn or thermal processing projects listed in subdivision (d) of Section 21151.1 of the Public Resources Code.

(2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety Code. Preparation of an EIR is not mandatory if the facility only manages hazardous waste which is identified or listed pursuant to Section 25140 or Section 25141 of the Health and Safety Code on or after January 1, 1992; or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after

January 1, 1992. "Initial issuance" does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(3) The initial issuance of a hazardous waste facility permit pursuant to Section 25200 of the Health and Safety Code to an off-site large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of that code. Preparation of an EIR is not mandatory if the facility only manages hazardous waste which is identified or listed pursuant to Section 25140 or Section 25141 of the Health and Safety Code on or after January 1, 1992; or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992. "Initial issuance" does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(4) Any open pit mining operation which is subject to the permit requirements of the Surface Mining and Reclamation Act (beginning at Section 2710 of the Public Resources Code) and which utilizes a cyanide heap-leaching process for the purpose of extracting gold or other precious metals.

(5) An initial base reuse plan as defined in Section 15229.

(b) A lead agency shall prepare or have prepared an EIR for the selection of a California Community College, California State University, University of California, or California Maritime Academy campus location and approval of a long range development plan for that campus.

(1) The EIR for a long range development plan for a campus shall include an analysis of, among other significant impacts, those environmental effects relating to changes in enrollment levels.

(2) Subsequent projects within the campus may be addressed in environmental analyses tiered on the EIR prepared for the long range development plan.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21080.09, 21083.8.1, 21151.1, and 21151.7, Public Resources Code.

15082. NOTICE OF PREPARATION AND DETERMINATION OF SCOPE OF EIR

(a) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send to the Office of Planning and Research and each responsible and trustee agency a notice of preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project. If the United States Department of Defense or any branch of the United States Armed Forces has given the lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the military contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of preparation of an EIR pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5.

(1) The notice of preparation shall provide the responsible and trustee agencies and the Office of Planning and Research with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include:

(A) Description of the project,

(B) Location of the project (either by street address and cross street, for a project in an urbanized area, or by attaching a specific map, preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name), and

(C) Probable environmental effects of the project.

(2) A sample notice of preparation is shown in Appendix I. Public agencies are free to devise their own formats for this notice. A copy of the initial study may be sent with the notice to supply the necessary information.

(3) To send copies of the notice of preparation, the lead agency shall use either certified mail or any other method of transmittal that provides it with a record that the notice was received.

(4) The lead agency may begin work on the draft EIR immediately without awaiting responses to the notice of preparation. The draft EIR in preparation may need to be revised or expanded to conform to responses to the notice of preparation. A lead agency shall not circulate a draft EIR for public review before the time period for responses to the notice of preparation has expired.

(b) Response to Notice of Preparation. Within 30 days after receiving the notice of preparation under subdivision (a), each responsible and trustee agency and the Office of Planning and Research shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible or trustee agency's area of statutory responsibility that must be included in the draft EIR.

(1) The response at a minimum shall identify:

(A) The significant environmental issues and reasonable alternatives and mitigation measures that the responsible or trustee agency, or the Office of Planning and Research, will need to have explored in the draft EIR; and

(B) Whether the agency will be a responsible agency or trustee agency for the project.

(2) If a responsible or trustee agency or the Office of Planning and Research fails by the end of the 30-day period to provide the lead agency with either a response to the notice or a well-justified request for additional time, the lead agency may presume that none of those entities have a response to make.

(3) A generalized list of concerns not related to the specific project shall not meet the requirements of this section for a response.

(c) Meetings. In order to expedite the consultation, the lead agency, a responsible agency, a trustee agency, the Office of Planning and Research or a project applicant may request one or more meetings between representatives of the agencies involved to assist the lead agency in determining the scope and content of the environmental information that the responsible or trustee agency may require. Such meetings shall be convened by the lead agency as soon as possible, but no later than 30 days after the meetings were requested. On request, the Office of Planning and Research will assist in convening meetings that involve state agencies.

(1) For projects of statewide, regional or areawide significance pursuant to Section 15206, the lead agency shall conduct at least one scoping meeting. A scoping meeting held pursuant to the National Environmental Policy Act, 42 USC 4321 et seq. (NEPA) in the city or county within which the project is located satisfies this requirement if the lead agency meets the notice requirements of subsection (c)(2) below.

(2) The lead agency shall provide notice of the scoping meeting to all of the following:

(A) any county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and the county or city;

(B) any responsible agency

(C) any public agency that has jurisdiction by law with respect to the project;

(D) any organization or individual who has filed a written request for the notice.

(3) A lead agency shall call at least one scoping meeting for a proposed project that may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the Department. The lead agency shall call the scoping meeting as soon as possible but not later than 30 days after receiving the request from the Department of Transportation.

(d) Office of Planning and Research. The Office of Planning and Research will ensure that the state responsible and trustee agencies reply to the lead agency within 30 days of receipt of the notice of preparation by the state responsible and trustee agencies.

(e) Identification Number. When the notice of preparation is submitted to the State Clearinghouse, the state identification number issued by the Clearinghouse shall be the identification number for all subsequent environmental documents on the project. The identification number should be referenced on all subsequent correspondence regarding the project, specifically on the title page of the draft and final EIR and on the notice of determination.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.9, 21080.4, and 21098, Public Resources Code.

15083. EARLY PUBLIC CONSULTATION

Prior to completing the draft EIR, the Lead Agency may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious forms later in the review process. This early consultation may be called scoping. Scoping will be necessary when preparing an EIR/EIS jointly with a federal agency.

(a) Scoping has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR and in eliminating from detailed study issues found not to be important.

(b) Scoping has been found to be an effective way to bring together and resolve the concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds.

(c) Where scoping is used, it should be combined to the extent possible with consultation under Section 15082.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21082.1, Public Resources Code; Section 4, Chapter 480 of the Statutes of 1981; 40 Code of Federal Regulations, Part 1501.7.

15083.5. [DELETED]

15084. PREPARING THE DRAFT EIR

(a) The draft EIR shall be prepared directly by or under contract to the Lead Agency. The required contents of a draft EIR are discussed in Article 9 beginning with Section 15120.

(b) The Lead Agency may require the project applicant to supply data and information both to determine whether the project may have a significant effect on the environment and to assist the Lead Agency in preparing the draft EIR. The requested information should include an identification of other public agencies which will have jurisdiction by law over the project.

(c) Any person, including the applicant, may submit information or comments to the Lead Agency to assist in the preparation of the draft EIR. The submittal may be presented in any format, including the form of a draft EIR. The Lead Agency must consider all information and

comments received. The information or comments may be included in the draft EIR in whole or in part.

(d) The Lead Agency may choose one of the following arrangements or a combination of them for preparing a draft EIR.

(1) Preparing the draft EIR directly with its own staff.

(2) Contracting with another entity, public or private, to prepare the draft EIR.

(3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.

(4) Executing a third party contract or Memorandum of Understanding with the applicant to govern the preparation of a draft EIR by an independent contractor.

(5) Using a previously prepared EIR.

(e) Before using a draft prepared by another person, the Lead Agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the Lead Agency. The Lead Agency is responsible for the adequacy and objectivity of the draft EIR.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21082.1, Public Resources Code.

15085. NOTICE OF COMPLETION

(a) As soon as the draft EIR is completed, a notice of completion must be filed with the Office of Planning and Research in a printed hard copy or in electronic form on a diskette or by electronic mail transmission.

(b) The notice of completion shall include:

(1) A brief description of the project,

(2) The proposed location of the project (either by street address and cross street, for a project in an urbanized area, or by attaching a specific map, preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name).

(3) An address where copies of the draft EIR are available, and

(4) The review period during which comments will be received on the draft EIR.

(c) A sample form for the notice of completion is included in Appendix L

(d) Where the EIR will be reviewed through the state review process handled by the State Clearinghouse, the notice of completion cover form required by the State Clearinghouse will serve as the notice of completion (see Appendix C).

(e) Public agencies are encouraged to make copies of notices of completion filed pursuant to this section available in electronic format on the Internet.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.

15086. CONSULTATION CONCERNING DRAFT EIR

(a) The Lead Agency shall consult with and request comments on the draft EIR from:

(1) Responsible Agencies,

(2) Trustee agencies with resources affected by the project, and

(3) Any other state, federal, and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project, including water agencies consulted pursuant to section 15083.5.

(4) Any city or county which borders on a city or county within which the project is located.

(5) For a project of statewide, regional, or areawide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site, and freeways, highways and rail transit service within 10 miles of the project site.

(6) For a state lead agency when the EIR is being prepared for a highway or freeway project, the ~~State~~ California Air Resources Board as to the air pollution impact of the potential vehicular use of the highway or freeway and if a non-attainment area, the local air quality management district for a determination of conformity with the air quality management plan.

(7) For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources.

(b) The lead agency may consult directly with:

(1) Any person who has special expertise with respect to any environmental impact involved,

(2) Any member of the public who has filed a written request for notice with the lead agency or the clerk of the governing body.

(3) Any person identified by the applicant whom the applicant believes will be concerned with the environmental effects of the project.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation.

(d) Prior to the close of the public review period, a responsible agency or trustee agency which has identified what that agency considers to be significant environmental effects shall advise the lead agency of those effects. As to those effects relevant to its decision, if any, on the project, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the lead agency to appropriate, readily available guidelines or reference documents concerning mitigation measures. If the responsible or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21081.6, 21092.4, 21092.5, 21104 and 21153, Public Resources Code.

15087. PUBLIC REVIEW OF DRAFT EIR

(a) The lead agency shall provide public notice of the availability of a draft EIR at the same time it sends a notice of completion to the Office of Planning and Research. If the United States Department of Defense or any branch of the United States Armed Forces has given the lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of availability of a draft EIR pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5. Theis public notice shall be given as provided under Section 15105 (a sample form is provided in Appendix L). Notice shall be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(b) The alternatives for providing notice specified in subdivision (a) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

(c) The notice shall disclose the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments. If the review period is shortened, the notice shall disclose that fact.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project when known to the lead agency at the time of notice.

(4) A list of the significant environmental effects anticipated as a result of the project, to the extent which such effects are known to the lead agency at the time of the notice.

(5) The address where copies of the EIR and all documents referenced in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.

(6) The presence of the site on any of the lists of sites enumerated under Section 65962.5 of the Government Code including, but not limited to, lists of hazardous waste facilities, land designated as hazardous waste property, hazardous waste disposal sites and others, and the information in the Hazardous Waste and Substances Statement required under subdivision (f) of that Section.

(d) The notice required under this section shall be posted in the office of the county clerk of each county in which the project will be located for a period of at least 30 days. The county clerk shall post such notices within 24 hours of receipt.

(e) In order to provide sufficient time for public review, the review period for a draft EIR shall be as provided in Section 15105. The review period shall be combined with the consultation required under Section 15086. When a draft EIR has been submitted to the State Clearinghouse, the public review period shall be at least as long as the review period established by the State Clearinghouse. The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

(f) Public agencies shall use the State Clearinghouse to distribute draft EIRs to state agencies for review and should use areawide clearinghouses to distribute the documents to regional and local agencies.

(g) To make copies of EIRs available to the public, Lead Agencies should furnish copies of draft EIRs to public library systems serving the area involved. Copies should also be available in offices of the Lead Agency.

(h) Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(i) Public hearings may be conducted on the environmental documents, either in separate proceedings or in conjunction with other proceedings of the public agency. Public hearings are encouraged, but not required as an element of the CEQA process.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.3, 21092.6, 21098, 21104, 21152, 21153 and 21161, Public Resources Code.

15088. EVALUATION OF AND RESPONSE TO COMMENTS

(a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The Lead Agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

(b) The lead agency shall provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.

(c) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

(d) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the Lead Agency should either:

(1) Revise the text in the body of the EIR, or

(2) Include marginal notes showing that the information is revised in the response to comments.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21092.5, 21104, and 21153, Public Resources Code; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830; *Cleary v. County of Stanislaus* (1981) 118 Cal. App. 3d 348.

15088.5. RECIRCULATION OF AN EIR PRIOR TO CERTIFICATION

(a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043)

(b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

(c) If the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified.

(d) Recirculation of an EIR requires notice pursuant to Section 15087, and consultation pursuant to Section 15086.

(e) A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.

(f) The lead agency shall evaluate and respond to comments as provided in Section 15088. Recirculating an EIR can result in the lead agency receiving more than one set of comments from reviewers. The following are two ways in which the lead agency may identify the set of comments to which it will respond. This dual approach avoids confusion over whether the lead agency must respond to comments which are duplicates or which are no longer pertinent due to revisions to the EIR. In no case shall the lead agency fail to respond to pertinent comments on significant environmental issues.

(1) When an EIR is substantially revised and the entire document is recirculated, the lead agency may require reviewers to submit new comments and**,** in such cases, need not respond to those comments received during the earlier circulation period. The lead agency shall advise reviewers, either in the text of the revised EIR or by an attachment to the revised EIR, that although part of the administrative record, the previous comments do not require a written response in the final EIR, and that new comments must be submitted for the revised EIR. The lead agency need only respond to those comments submitted in response to the recirculated revised EIR.

(2) When the EIR is revised only in part and the lead agency is recirculating only the revised chapters or portions of the EIR, the lead agency may request that reviewers limit their comments to the revised chapters or portions of the recirculated EIR. The lead agency need only respond to (i) comments received during the initial circulation period that relate to chapters or portions of the document that were not revised and recirculated, and (ii) comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated. The lead agency's request that reviewers limit the scope of their comments shall be included either within the text of the revised EIR or by an attachment to the revised EIR.

(3) As part of providing notice of recirculation as required by Public Resources Code Section 21092.1, the lead agency shall send a notice of recirculation to every agency, person, or organization that commented on the prior EIR. The notice shall indicate, at a minimum, whether new comments may be submitted only on the recirculated portions of the EIR or on the entire EIR in order to be considered by the agency.

(g) When recirculating a revised EIR, either in whole or in part, the lead agency shall, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21092.1, Public Resources Code; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

15089. PREPARATION OF FINAL EIR

(a) The Lead Agency shall prepare a final EIR before approving the project. The contents of a final EIR are specified in Section 15132 of these Guidelines.

(b) Lead Agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project. The review of a final EIR should focus on the responses to comments on the draft EIR.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21100, 21105, and 21151, Public Resources Code; *City of Carmel-by-the-Sea v. Board of Supervisors*, (1977) 71 Cal. App. 3d 84.

15090. CERTIFICATION OF THE FINAL EIR

(a) Prior to approving a project the lead agency shall certify that:

(1) The final EIR has been completed in compliance with CEQA;

(2) The final EIR was presented to the decision-making body of the lead agency, and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and

(3) The final EIR reflects the lead agency's independent judgment and analysis.

(b) When an EIR is certified by a non-elected decision-making body within a local lead agency, that certification may be appealed to the local lead agency's elected decision-making body, if one exists. For example, certification of an EIR for a tentative subdivision map by a city's planning commission may be appealed to the city council. Each local lead agency shall provide for such appeals.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21082.1, 21100,and 21151, Public Resources Code; *City of Carmel-by-the-Sea v. Board of Supervisors* (1977) 71 Cal.App.3d 84; *Kleist v. City of Glendale* (1976) 56 Cal.App.3d 770.

15091. FINDINGS

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.

(c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

(d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a

condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

(e) The public agency shall specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.

(f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002, 21002.1, 21081, and 21081.6, Public Resources Code; *Laurel Hills Homeowners Association v. City Council* (1978) 83 Cal.App.3d 515; *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348; *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433.

15092. APPROVAL

(a) After considering the final EIR and in conjunction with making findings under Section 15091, the Lead Agency may decide whether or how to approve or carry out the project.

(b) A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:

(1) The project as approved will not have a significant effect on the environment, or

(2) The agency has:

(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

(c) With respect to a project which includes housing development, the public agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21159.26, Public Resources Code; *Friends of Mammoth v. Board of Supervisors*, (1972) 8 Cal. App. 3d 247; *San Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *City of Carmel-by-the-Sea v. Board of Supervisors*, (1977) 71 Cal. App. 3d 84; *Laurel Hills Homeowners Association v. City Council*, (1978) 83 Cal. App. 3d 515.

15093. STATEMENT OF OVERRIDING CONSIDERATIONS

(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, <u>including region-wide or statewide environmental benefits,</u> of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, <u>including region-wide or statewide environmental benefits,</u> of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

Note: Authority cited: Sections 21083 and 21083.05, Public Resources Code; Reference: Sections 21002 and 21081, Public Resources Code; *San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584; *City of Carmel-by-the-Sea v. Board of Supervisors* (1977) 71 Cal.App.3d 84; *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433; *City of Marina v. Board of Trustees of Cal. State Univ.* (2006) 39 Cal.4th 341.

15094. NOTICE OF DETERMINATION

(a) The lead agency shall file a notice of determination within five working days after deciding to carry out or approve the project.

(b) The notice of determination shall include:

(1) An identification of the project including the project title as identified on the draft EIR, and the location of the project (either by street address and cross street for a project in an urbanized area or by attaching a specific map, preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name). If the notice of determination is filed with the State Clearinghouse, the State Clearinghouse identification number for the draft EIR shall be provided.

(2) A brief description of the project.

(3) The lead agency's name and the date on which the agency approved the project. If a responsible agency files the notice of determination pursuant to Section 15096(i), the responsible agency's name and date of approval shall also be identified.

(4) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(5) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(6) Whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted.

(7) Whether findings were made pursuant to Section 15091.

(8) Whether a statement of overriding considerations was adopted for the project.

(9) The address where a copy of the final EIR and the record of project approval may be examined.

(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with the Office of Planning and Research within five working days after approval of the project by the lead agency.

(d) If the lead agency is a local agency, the local lead agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located, within five working days after approval of the project by the lead agency. If the project requires discretionary approval from any state agency, the local lead agency shall also, within five working days of this approval, file a copy of the notice of determination with the Office of Planning and Research.

(e) A notice of determination filed with the county clerk shall be available for public inspection and shall be posted within 24 hours of receipt for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period during which it was posted. The local lead agency shall retain the notice for not less than 12 months.

(f) A notice of determination filed with the Office of Planning and Research shall be available for public inspection and shall be posted for a period of at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.

(g) The filing of the notice of determination pursuant to subdivision (c) above for state agencies and the filing and posting of the notice of determination pursuant to subdivisions (d) and (e) above for local agencies, start a 30-day statute of limitations on court challenges to the approval under CEQA.

(h) A sample notice of determination is provided in Appendix D. Each public agency may devise its own form, but any such form shall include, at a minimum, the information required by subdivision (b). Public agencies are encouraged to make copies of all notices filed pursuant to this section available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of the Guidelines and the Public Resources Code.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21108, 21152 and 21167, Public Resources Code; *Citizens of Lake Murray Area Association v. City Council* (1982) 129 Cal. App. 3d 436.

15095. DISPOSITION OF A FINAL EIR

The lead agency shall:

(a) File a copy of the final EIR with the appropriate planning agency of any city, county, or city and county where significant effects on the environment may occur.

(b) Include the final EIR as part of the regular project report which is used in the existing project review and budgetary process if such a report is used.

(c) Retain one or more copies of the final EIR as public records for a reasonable period of time.

(d) Require the applicant to provide a copy of the certified, final EIR to each responsible agency.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21105, 21151 and 21165, Public Resources Code; County of Inyo v. Yorty, (1973) 32 Cal. App. 3d 795.

15096. PROCESS FOR A RESPONSIBLE AGENCY

(a) General. A Responsible Agency complies with CEQA by considering the EIR or Negative Declaration prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved. This section identifies the special duties a public agency will have when acting as a Responsible Agency.

(b) Response to Consultation. A Responsible Agency shall respond to consultation by the Lead Agency in order to assist the Lead Agency in preparing adequate environmental documents for the project. By this means, the Responsible Agency will ensure that the documents it will use will comply with CEQA.

(1) In response to consultation, a Responsible Agency shall explain its reasons for recommending whether the Lead Agency should prepare an EIR or Negative Declaration for a project. Where the Responsible Agency disagrees with the Lead Agency's proposal to prepare a Negative Declaration for a project, the Responsible Agency should identify the significant environmental effects which it believes could result from the project and recommend either that an EIR be prepared or that the project be modified to eliminate the significant effects.

(2) As soon as possible, but not longer than 30 days after receiving a Notice of Preparation from the Lead Agency, the Responsible Agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the Responsible Agency's statutory responsibilities in

connection with the proposed project. The Lead Agency shall include this information in the EIR.

(c) Meetings. The Responsible Agency shall designate employees or representatives to attend meetings requested by the Lead Agency to discuss the scope and content of the EIR.

(d) Comments on Draft EIRs and Negative Declarations. A Responsible Agency should review and comment on draft EIRs and Negative Declarations for projects which the Responsible Agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the appropriateness of using a Negative Declaration, or on additional alternatives or mitigation measures which the EIR should include. The comments shall be limited to those project activities which are within the agency's area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency. Comments shall be as specific as possible and supported by either oral or written documentation.

(e) Decision on Adequacy of EIR or Negative Declaration. If a Responsible Agency believes that the final EIR or Negative Declaration prepared by the Lead Agency is not adequate for use by the Responsible Agency, the Responsible Agency must either:

(1) Take the issue to court within 30 days after the Lead Agency files a Notice of Determination;

(2) Be deemed to have waived any objection to the adequacy of the EIR or Negative Declaration;

(3) Prepare a subsequent EIR if permissible under Section 15162; or

(4) Assume the Lead Agency role as provided in Section 15052(a)(3).

(f) Consider the EIR or Negative Declaration. Prior to reaching a decision on the project, the Responsible Agency must consider the environmental effects of the project as shown in the EIR or Negative Declaration. A subsequent or supplemental EIR can be prepared only as provided in Sections 15162 or 15163.

(g) Adoption of Alternatives or Mitigation Measures.

(1) When considering alternatives and mitigation measures, a Responsible Agency is more limited than a Lead Agency. A Responsible Agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.

(2) When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. With respect to a project which includes housing development, the Responsible Agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

(h) Findings. The Responsible Agency shall make the findings required by Section 15091 for each significant effect of the project and shall make the findings in Section 15093 if necessary.

(i) Notice of Determination. The Responsible Agency should file a Notice of Determination in the same manner as a Lead Agency under Section 15075 or 15094 except that the Responsible Agency does not need to state that the EIR or Negative Declaration complies with CEQA. The Responsible Agency should state that it considered the EIR or Negative Declaration as prepared by a Lead Agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21165, 21080.1, 21080.3, 21080.4, 21082.1, and 21002.1(b) and (d), Public Resources Code.

15097. MITIGATION MONITORING OR REPORTING.

(a) This section applies when a public agency has made the findings required under paragraph (1) of subdivision (a) of Section 15091 relative to an EIR or adopted a mitigated negative declaration in conjunction with approving a project. In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

(b) Where the project at issue is the adoption of a general plan, specific plan, community plan or other plan-level document (zoning, ordinance, regulation, policy), the monitoring plan shall apply to policies and any other portion of the plan that is a mitigation measure or adopted alternative. The monitoring plan may consist of policies included in plan-level documents. The annual report on general plan status required pursuant to the Government Code is one example of a reporting program for adoption of a city or county general plan.

(c) The public agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" generally consists of a written compliance review that is presented to the decision making body or authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. "Monitoring" is generally an ongoing or periodic process of project oversight. There is often no clear distinction between monitoring and reporting and the program best suited to ensuring compliance in any given instance will usually involve elements of both. The choice of program may be guided by the following:

(1) Reporting is suited to projects which have readily measurable or quantitative mitigation measures or which already involve regular review. For example, a report may be required upon issuance of final occupancy to a project whose mitigation measures were confirmed by building inspection.

(2) Monitoring is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.

(3) Reporting and monitoring are suited to all but the most simple projects. Monitoring ensures that project compliance is checked on a regular basis during and, if necessary after, implementation. Reporting ensures that the approving agency is informed of compliance with mitigation requirements.

(d) Lead and responsible agencies should coordinate their mitigation monitoring or reporting programs where possible. Generally, lead and responsible agencies for a given project will adopt separate and different monitoring or reporting programs. This occurs because of any of the following reasons: the agencies have adopted and are responsible for reporting on or monitoring different mitigation measures; the agencies are deciding on the project at different times; each agency has the discretion to choose its own approach to monitoring or reporting; and each agency has its own special expertise.

(e) At its discretion, an agency may adopt standardized policies and requirements to guide individually adopted monitoring or reporting programs. Standardized policies and requirements may describe, but are not limited to:

(1) The relative responsibilities of various departments within the agency for various aspects of monitoring or reporting, including lead responsibility for administering typical programs and support responsibilities.

(2) The responsibilities of the project proponent.

(3) Agency guidelines for preparing monitoring or reporting programs.

(4) General standards for determining project compliance with the mitigation measures or revisions and related conditions of approval.

(5) Enforcement procedures for noncompliance, including provisions for administrative appeal.

(6) Process for informing staff and decision makers of the relative success of mitigation measures and using those results to improve future mitigation measures.

(f) Where a trustee agency, in timely commenting upon a draft EIR or a proposed mitigated negative declaration, proposes mitigation measures or project revisions for incorporation into a project, that agency, at the same time, shall prepare and submit to the lead or responsible agency a draft monitoring or reporting program for those measures or revisions. The lead or responsible agency may use this information in preparing its monitoring or reporting program.

(g) When a project is of statewide, regional, or areawide importance, any transportation information generated by a required monitoring or reporting program shall be submitted to the transportation planning agency in the region where the project is located and to the California Department of Transportation. Each transportation planning agency and the California Department of Transportation shall adopt guidelines for the submittal of such information.

Note: Authority cited: Section 21083, Public Resources Code. References: Sections 21081.6 and 21081.7, Public Resources Code.

Article 8. Time Limits

SECTIONS 15100 TO 15112

15100. GENERAL

(a) Public agencies shall adopt time limits to govern their implementation of CEQA consistent with this article.

(b) Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21000–21176, Public Resources Code.

15101. REVIEW OF APPLICATION FOR COMPLETENESS

A Lead Agency or Responsible Agency shall determine whether an application for a permit or other entitlement for use is complete within 30 days from the receipt of the application except as provided in Section 15111. If no written determination of the completeness of the application is made within that period, the application will be deemed complete on the 30th day.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21083, Public Resources Code; Section 65943, Government Code.

15102. INITIAL STUDY

The Lead Agency shall determine within 30 days after accepting an application as complete whether it intends to prepare an EIR or a Negative Declaration or use a previously prepared EIR or

Negative Declaration except as provided in Section 15111. The 30 day period may be extended 15 days upon the consent of the lead agency and the project applicant.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080.2, Public Resources Code.

15103. RESPONSE TO NOTICE OF PREPARATION

Responsible and Trustee Agencies, and the Office of Planning and Research shall provide a response to a Notice of Preparation to the Lead Agency within 30 days after receipt of the notice. If they fail to reply within the 30 days with either a response or a well justified request for additional time, the Lead Agency may assume that none of those entitles have a response to make and may ignore a late response.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080.4, Public Resources Code.

15104. CONVENING OF MEETINGS

The Lead Agency shall convene a meeting with agency representatives to discuss the scope and content of the environmental information a Responsible Agency will need in the EIR as soon as possible but no later than 30 days after receiving a request for the meeting. The meeting may be requested by the Lead Agency, a Responsible Agency, a Trustee Agency, the Office of Planning and Research, or by the project applicant.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080.4, Public Resources Code.

15105. PUBLIC REVIEW PERIOD FOR A DRAFT EIR OR A PROPOSED NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

(a) The public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse.

(b) The public review period for a proposed negative declaration or mitigated negative declaration shall be not less than 20 days. When a proposed negative declaration or mitigated negative declaration is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period, not less than 20 days, is approved by the State Clearinghouse.

(c) If a draft EIR or proposed negative declaration or mitigated negative declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse. The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

(d) A shortened Clearinghouse review period may be granted in accordance with the provisions of Appendix L and the following principles:

  (1) A shortened review shall not be granted for any proposed project of statewide, areawide, or regional environmental significance.

  (2) Requests for shortened review periods shall be submitted to the Clearinghouse in writing by the decision-making body of the lead agency, or a representative authorized by ordinance, resolution, or delegation of the decision-making body.

  (3) The lead agency has contacted responsible and trustee agencies and they have agreed to the shortened review period.

(e) The State Clearinghouse shall distribute a draft EIR or proposed negative declaration or mitigated negative declaration within three working days after the date of receipt if the submittal is determined by the State Clearinghouse to be complete.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21091 and 21092, Public Resources Code; *People v. County of Kern* (1974) 39 Cal.App.3d 830.

15106. [DELETED]

15107. COMPLETION OF NEGATIVE DECLARATION

With private projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the negative declaration must be completed and approved within 180 days from the date when the lead agency accepted the application as complete.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21100.2 and 21151.5, Public Resources Code.

15108. COMPLETION AND CERTIFICATION OF EIR

With a private project, the Lead Agency shall complete and certify the final EIR as provided in Section 15090 within one year after the date when the Lead Agency accepted the application as complete. Lead Agency procedures may provide that the one-year time limit may be extended once for a period of not more than 90 days upon consent of the Lead Agency and the applicant.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21100.2 and 21151.5, Public Resources Code; Government Code Section 65950.

15109. SUSPENSION OF TIME PERIODS

An unreasonable delay by an applicant in meeting requests by the Lead Agency necessary for the preparation of a Negative Declaration or an EIR shall suspend the running of the time periods described in Sections 15107 and 15108 for the period of the unreasonable delay. Alternatively, an agency may disapprove a project application where there is unreasonable delay in meeting requests. The agency may allow a renewed application to start at the same point in the process where the application was when it was disapproved.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21100.2 and 21151.5, Public Resources Code; *Carmel Valley View, Ltd. v. Maggini*, 91 Cal. App. 3d 318.

15110. PROJECTS WITH FEDERAL INVOLVEMENT

(a) At the request of an applicant, the Lead Agency may waive the one-year time limit for completing and certifying a final EIR or the 105-day period for completing a Negative Declaration if:

  (1) The project will be subject to CEQA and to the National Environmental Policy Act,

  (2) Additional time will be required to prepare a combined EIR-EIS or combined Negative Declaration-Finding of No Significant Impact as provided in Section 15221, and

  (3) The time required to prepare the combined document will be shorter than the time required to prepare the documents separately.

(b) The time limits for taking final action on a permit for a development project may also be waived where a combined EIR-EIS will be prepared.

(c) The time limits for processing permits for development projects under Government Code Sections 65950–65960 shall not apply if federal statutes or regulations require time schedules which exceed the state time limits. In this event, any state agencies involved shall make a final decision on the project within the federal time limits.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21083.6 and 21083.7, Public Resources Code; Sections 65951 and 65954, Government Code; Public Law 91–190 as amended, 42 U.S.C.A. 4321–4347.

15111. PROJECTS WITH SHORT TIME PERIODS FOR APPROVAL

(a) A few statutes or ordinances require agencies to make decisions on permits within time limits that are so short that review of the project under CEQA would be difficult. To enable the Lead Agency to comply with both the permit statute and CEQA, the Lead Agency shall deem an application for a project not received for filing under the permit statute or ordinance until such time as progress toward completing the environmental documentation required by CEQA is sufficient to enable the Lead Agency to finish the CEQA process within the short permit time limit. This section will apply where all of the following conditions are met:

(1) The enabling legislation for a program, other than Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, requires the Lead Agency to take action on an application within a specified period of time that is six months or less, and

(2) The enabling legislation provides that the project will become approved by operation of law if the Lead Agency fails to take any action within such specified time period, and

(3) The project involves the issuance of a lease, permit, license, certificate, or other entitlement for use.

(b) Examples of time periods subject to this section include, but are not limited to:

(1) Action on a timber harvesting plan by the Director of Forestry within 15 days pursuant to Section 4582.7 of the Public Resources Code,

(2) Action on a permit by the San Francisco Bay Conservation and Development Commission within 90 days pursuant to Section 66632(f) of the Government Code, and

(3) Action on an oil and gas permit by the Division of Oil and Gas within 10 days pursuant to Sections 3203 and 3724 of the Public Resources Code.

(c) In any case described in this section, the environmental document shall be completed or certified and the decision on the project shall be made within the period established under the Permit Streamlining Act (Government Code Sections 65920, et seq.).

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21100.2 and 21151.5, Public Resources Code; *N.R.D.C. v. Arcata National Corp.* (1976) 59 Cal.App.3d 959.

15112. STATUTES OF LIMITATIONS

(a) CEQA provides unusually short statutes of limitations on filing court challenges to the approval of projects under the Act.

(b) The statute of limitations periods are not public review periods or waiting periods for the person whose project has been approved. The project sponsor may proceed to carry out the project as soon as the necessary permits have been granted. The statute of limitations cuts off the right of another person to file a court action challenging approval of the project after the specified time period has expired.

(c) The statute of limitations periods under CEQA are as follows:

(1) Where the public agency filed a Notice of Determination in compliance with Sections 15075 or 15094, 30 days after the filing of the notice and the posting on a list of such notices.

(2) Where the public agency filed a Notice of Exemption in compliance with Section 15062, 35 days after the filing of the notice and the posting on a list of such notices.

(3) Where a certified state regulatory agency files a Notice of Decision in compliance with Public Resources Code Section 21080.5(d)(2)(E), 30 days after the filing of the notice.

(4) Where the Secretary for Resources certifies a state environmental regulatory agency under Public Resources Code Section 21080.5, the certification may be challenged only during the 30 days following the certification decision.

(5) Where none of the other statute of limitations periods in this section apply, 180 days after either:

(A) The public agency's decision to carry out or approve the project, or

(B) Commencement of the project if the project is undertaken without a formal decision by the public agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21167, 21167.3, and 21080.5, Public Resources Code; *Kriebel v. City Council*, 112 Cal. App. 3d 693; *Citizens of Lake Murray Area Association v. City Council*, (1982) 129 Cal. App. 3d 436.

Article 9. Contents of Environmental Impact Reports

SECTIONS 15120 TO 15132

15120. GENERAL

(a) Environmental Impact Reports shall contain the information outlined in this article, but the format of the document may be varied. Each element must be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.

(b) The EIR may be prepared as a separate document, as part of a general plan, or as part of a project report. If prepared as a part of the project report, it must still contain one separate and distinguishable section providing either analysis of all the subjects required in an EIR or, as a minimum, a table showing where each of the subjects is discussed. When the Lead Agency is a state agency, the EIR shall be included as part of the regular project report if such a report is used in the agency's existing review and budgetary process.

(c) Draft EIRs shall contain the information required by Sections 15122 through 15131. Final EIRs shall contain the same information and the subjects described in Section 15132.

(d) No document prepared pursuant to this article that is available for public examination shall include a "trade secret" as defined in Section 6254.7 of the Government Code, information about the location of archaeological sites and sacred lands, or any other information that is subject to the disclosure restrictions of Section 6254 of the Government Code.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21100, 21105 and 21160, Public Resources Code.

15121. INFORMATIONAL DOCUMENT

(a) An EIR is an informational document which will inform public agency decision makers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information which may be presented to the agency.

(b) While the information in the EIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the EIR by making findings under Section 15091 and if necessary by making a statement of overriding consideration under Section 15093.

(c) The information in an EIR may constitute substantial evidence in the record to support the agency's action on the project if its decision is later challenged in court.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21061, Public Resources Code; *Carmel Valley View, Ltd. v. Board of Supervisors*, (1976) 58 Cal. App. 3d 817.

15122. TABLE OF CONTENTS OR INDEX

An EIR shall contain at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21061, Public Resources Code.

15123. SUMMARY

(a) An EIR shall contain a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical.

(b) The summary shall identify:

(1) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;

(2) Areas of controversy known to the Lead Agency including issues raised by agencies and the public; and

(3) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

(c) The summary should normally not exceed 15 pages.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21061, Public Resources Code.

15124. PROJECT DESCRIPTION

The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR.

(1) This statement shall include, to the extent that the information is known to the Lead Agency,

(A) A list of the agencies that are expected to use the EIR in their decision making, and

(B) A list of permits and other approvals required to implement the project.

(C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.

(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the

Office of Planning and Research will provide assistance in identifying state permits for a project.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080.3, 21080.4, 21165, 21166, and 21167.2, Public Resources Code; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.

15125. ENVIRONMENTAL SETTING

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(b) When preparing an EIR for a plan for the reuse of a military base, lead agencies should refer to the special application of the principle of baseline conditions for determining significant impacts contained in Section 15229.

(c) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.

(d) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, regional blueprint plans, plans for the reduction of greenhouse gas emissions, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the Coastal Zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

(e) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced as well as the potential future conditions discussed in the plan.

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code; Reference: Sections 21060.5, 21061, and 21100, Public Resources Code; *E.P.I.C. v. County of El Dorado* (1982) 131 Cal.App.3d 350; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.

15126. CONSIDERATION AND DISCUSSION OF ENVIRONMENTAL IMPACTS

All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The subjects listed below shall be discussed as directed in Sections 15126.2, 15126.4 and 15126.6, preferably in separate sections or paragraphs of the EIR. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(a) Significant Environmental Effects of the Proposed Project.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented.

(c) Significant Irreversible Environmental Changes Which Would be Involved in the Proposed Project Should it be Implemented.

(d) Growth-Inducing Impact of the Proposed Project.

(e) The Mitigation Measures Proposed to Minimize the Significant Effects.

(f) Alternatives to the Proposed Project.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002, 21003, 21100, and 21081.6, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112.

15126.2 CONSIDERATION AND DISCUSSION OF SIGNIFICANT ENVIRONMENTAL IMPACTS.

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there. Similarly, the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

(c) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified. (See Public Resources Code section 21100.1 and Title 14, California Code of Regulations, section 15127 for limitations to applicability of this requirement.)

(d) Growth-Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Sections 21002, 21003, and 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; *Goleta Union School Dist. v. Regents of the Univ. of Calif* (1995) 37 Cal. App.4th 1025.

15126.4 CONSIDERATION AND DISCUSSION OF MITIGATION MEASURES PROPOSED TO MINIMIZE SIGNIFICANT EFFECTS.

(a) Mitigation Measures in General.

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

(2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.

(3) Mitigation measures are not required for effects which are not found to be significant.

(4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and

(B) The mitigation measure must be "roughly proportional" to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an *ad hoc* exaction, it must be "roughly proportional" to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

(5) If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination.

(b) Mitigation Measures Related to Impacts on Historical Resources.

(1) Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.

(2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.

(3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

(B) Preservation in place may be accomplished by, but is not limited to, the following:

1. Planning construction to avoid archaeological sites;
2. Incorporation of sites within parks, greenspace, or other open space;
3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.
4. Deeding the site into a permanent conservation easement.

(C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provisions for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code. If an artifact must be removed during project excavation or testing, curation may be an appropriate mitigation.

(D) Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

(c) Mitigation Measures Related to Greenhouse Gas Emissions.

Consistent with section 15126.4(a), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse gas emissions. Measures to mitigate the significant effects of greenhouse gas emissions may include, among others:

(1) Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency's decision;

(2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F;

(3) Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions;

(4) Measures that sequester greenhouse gases;

(5) In the case of the adoption of a plan, such as a general plan, long range development plan, or plans for the reduction of greenhouse gas emissions, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions.

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Sections 5020.5, 21002, 21003, 21083.05, 21100 and 21084.1, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; ~~and~~ *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011; *San Franciscans Upholding the Downtown Plan v. City & Co. of San Francisco* (2002) 102 Cal.App.4th 656; *Ass'n of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383; *Environmental Council of Sacramento v. City of Sacramento* (2006) 147 Cal.App.4th 1018.

15126.6 CONSIDERATION AND DISCUSSION OF ALTERNATIVES TO THE PROPOSED PROJECT.

(a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376).

(b) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(c) Selection of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are:(i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.

(d) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. (*County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1).

(e) "No project" alternative.

(1) The specific alternative of "no project" shall also be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline (see Section 15125).

(2) The "no project" analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

(3) A discussion of the "no project" alternative will usually proceed along one of two lines:

(A) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.

(B) If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed. In certain instances, the no project alternative means "no build" wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis

should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment.

(C) After defining the no project alternative using one of these approaches, the lead agency should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

(f) Rule of reason. The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(1) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; see *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1753, fn. 1).

(2) Alternative locations.

(A) Key question. The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

(B) None feasible. If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR. For example, in some cases there may be no feasible alternative locations for a geothermal plant or mining project which must be in close proximity to natural resources at a given location.

(C) Limited new analysis required. Where a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for projects with the same basic purpose, the lead agency should review the previous document. The EIR may rely on the previous document to help it assess the feasibility of potential project alternatives to the extent the circumstances remain substantially the same as they relate to the alternative. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 573).

(3) An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal. App.3d 274).

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002, 21002.1, 21003, and 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th

1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112.

15127. LIMITATIONS ON DISCUSSION OF ENVIRONMENTAL IMPACT

The information required by Section 15126.2(c) concerning irreversible changes, need be included only in EIRs prepared in connection with any of the following activities:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(b) The adoption by a Local Agency Formation Commission of a resolution making determinations; or

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21100.1, Public Resources Code.

15128. EFFECTS NOT FOUND TO BE SIGNIFICANT

An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an Initial Study.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21100, Public Resources Code.

15129. ORGANIZATIONS AND PERSONS CONSULTED

The EIR shall identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21104 and 21153, Public Resources Code.

15130. DISCUSSION OF CUMULATIVE IMPACTS

(a) An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in section 15065 ~~(c)~~(a)(3). Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable," a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.

(1) As defined in Section 15355, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.

(2) When the combined cumulative impact associated with the project's incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR. A lead agency shall identify facts and analysis supporting the lead agency's conclusion that the cumulative impact is less than significant.

(3) An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the

cumulative impact. The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable.

(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted ~~general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact.~~ local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. Such plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Any such ~~planning~~ document shall be referenced and made available to the public at a location specified by the lead agency.

(2) When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

(3) Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

(4) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available; and

(5) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.

(c) With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis.

(d) Previously approved land use documents ~~such as~~, including, but not limited to, general plans, specific plans, regional transportation plans, plans for the reduction of greenhouse gas emissions, and local coastal plans may be used in cumulative impact analysis. A pertinent discussion of cumulative impacts contained in one or more previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs. No further cumulative impacts analysis is required when a project is consistent with a general, specific, master or comparable programmatic plan where the lead agency determines that the regional or areawide cumulative impacts of the proposed project have already been adequately addressed, as defined in section 15152(f), in a certified EIR for that plan.

(e) If a cumulative impact was adequately addressed in a prior EIR for a community plan, zoning action, or general plan, and the project is consistent with that plan or action, then an EIR for such a project should not further analyze that cumulative impact, as provided in Section 15183(j).

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Sections 21003(d), 21083(b), 21093, 21094 and 21100, Public Resources Code; *Whitman v. Board of Supervisors,* (1979) 88 Cal. App. 3d 397; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692; *Laurel Heights Homeowners Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Sierra Club v. Gilroy* (1990) 220 Cal.App.3d 30; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421; *Concerned Citizens of South Cent. Los Angeles v. Los Angeles Unified Sch. Dist.* (1994) 24 Cal.App.4th 826; *Las Virgenes Homeowners Fed'n v. County of Los Angeles* (1986) 177 Cal.App.3d 300; *San Joaquin Raptor/Wildlife Rescue Ctr v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Fort Mojave Indian Tribe v. Cal. Dept. Of Health Services* (1995) 38 Cal.App.4th 1574; *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786; ~~and~~ *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98; and *Ass'n of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383.

15131. ECONOMIC AND SOCIAL EFFECTS

Economic or social information may be included in an EIR or may be presented in whatever form the agency desires.

(a) Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

(b) Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant. As an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment. The religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices. Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain the reason for determining that the effect is significant.

(c) Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21001(e) and (g), 21002, 21002.1, 21060.5, 21080.1, 21083(c), and 21100, Public Resources Code.

15132. CONTENTS OF FINAL ENVIRONMENTAL IMPACT REPORT

The Final EIR shall consist of:

(a) The draft EIR or a revision of the draft.

(b) Comments and recommendations received on the draft EIR either verbatim or in summary.

(c) A list of persons, organizations, and public agencies commenting on the draft EIR.

(d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.

(e) Any other information added by the Lead Agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21100, Public Resources Code.

Article 10. Considerations in Preparing EIRs and Negative Declarations

SECTIONS 15140 TO 15155

15140. WRITING

EIRs shall be written in plain language and may use appropriate graphics so that decision makers and the public can rapidly understand the documents.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003 and 21100, Public Resources Code.

15141. PAGE LIMITS

The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21100, Public Resources Code.

15142. INTERDISCIPLINARY APPROACH

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation.

Note: Authority cited: Section 21083, Public Resources Code; Reference Sections 21000, 21001, and 21100, Public Resources Code.

15143. EMPHASIS

The EIR shall focus on the significant effects on the environment. The significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence. Effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study. A copy of the Initial Study may be attached to the EIR to provide the basis for limiting the impacts discussed.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

15144. FORECASTING

Drafting an EIR or preparing a Negative Declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

15145. SPECULATION

If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code; *Topanga Beach Renters Association v. Department of General Services*, (1976) 58 Cal. App. 3d 712.

15146. DEGREE OF SPECIFICITY

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code. Formerly Section 15147.

15147. TECHNICAL DETAIL

The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

15148. CITATION

Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

15149. USE OF REGISTERED PROFESSIONALS IN PREPARING EIRS

(a) A number of statutes provide that certain professional services can be provided to the public only by individuals who have been registered by a registration board established under California law. Such statutory restrictions apply to a number of professions including but not limited to engineering, land surveying, forestry, geology, and geophysics.

(b) In its intended usage, an EIR is not a technical document that can be prepared only by a registered professional. The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects. As a result of information in the EIR, the Lead Agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment. State statutes may provide that only registered professionals can prepare technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

15150. INCORPORATION BY REFERENCE

(a) An EIR or Negative Declaration may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR or Negative Declaration.

(b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or Negative Declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the Lead Agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the Lead Agency does not have an office in the county.

(c) Where an EIR or Negative Declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.

(d) Where an agency incorporates information from an EIR that has previously been reviewed through the state review system, the state identification number of the incorporated document should be included in the summary or designation described in subdivision (c).

(e) Examples of materials that may be incorporated by reference include but are not limited to:

(1) A description of the environmental setting from another EIR.

(2) A description of the air pollution problems prepared by an air pollution control agency concerning a process involved in the project.

(3) A description of the city or county general plan that applies to the location of the project.

(4) A description of the effects of greenhouse gas emissions on the environment.

(f) Incorporation by reference is most appropriate for including long, descriptive, or technical materials that provide general background but do not contribute directly to the analysis of the problem at hand.

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code; Reference Sections 21003, 21061, 21083.05, and 21100, Public Resources Code.

15151. STANDARDS FOR ADEQUACY OF AN EIR

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21061 and 21100, Public Resources Code; *San Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal. App. 3d 584.

15152. TIERING

(a) "Tiering" refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to the later project.

(b) Agencies are encouraged to tier the environmental analyses which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.

(c) Where a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.

(d) Where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR or negative declaration on the later project to effects which:

  (1) Were not examined as significant effects on the environment in the prior EIR; or

  (2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

(e) Tiering under this section shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project is located, except that a project requiring a rezone to achieve or maintain conformity with a general plan may be subject to tiering.

(f) A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the

prior EIR. A negative declaration shall be required when the provisions of Section 15070 are met.

(1) Where a lead agency determines that a cumulative effect has been adequately addressed in the prior EIR, that effect is not treated as significant for purposes of the later EIR or negative declaration, and need not be discussed in detail.

(2) When assessing whether there is a new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects. At this point, the question is not whether there is a significant cumulative impact, but whether the effects of the project are cumulatively considerable. For a discussion on how to assess whether project impacts are cumulatively considerable, see Section 15064(i).

(3) Significant environmental effects have been "adequately addressed" if the lead agency determines that:

(A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report; or

(B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(g) When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that it is being tiered with the earlier EIR.

(h) There are various types of EIRs that may be used in a tiering situation. These include, but are not limited to, the following:

(1) General plan EIR (Section 15166).

(2) Staged EIR (Section 15167).

(3) Program EIR (Section 15168).

(4) Master EIR (Section 15175).

(5) Multiple-family residential development / residential and commercial or retail mixed-use development (Section 15179.5).

(6) Redevelopment project (Section 15180).

(7) Projects consistent with community plan, general plan, or zoning (Section 15183).

Note: Authority: Section 21083, Public Resources Code. Reference: Sections 21003, 21061, 21093, 21094, 21100, and 21151, Public Resources Code; *Stanislaus Natural Heritage Project, Sierra Club v. County of Stanislaus* (1996) 48 Cal.App.4th 182; *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App. 4th 729; and *Sierra Club v. County of Sonoma* (1992) 6 Cal.App. 4th 1307.

15153. USE OF AN EIR FROM AN EARLIER PROJECT

(a) The Lead Agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the Lead Agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same.

(b) When a Lead Agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, the Lead Agency shall use the following procedures:

(1) The Lead Agency shall review the proposed project with an Initial Study, using incorporation by reference if necessary, to determine whether the EIR would adequately describe:

(A) The general environmental setting of the project,

(B) The significant environmental impacts of the project, and

(C) Alternatives and mitigation measures related to each significant effect.

(2) If the Lead Agency believes that the EIR would meet the requirements of subdivision (1), it shall provide public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project. The notice shall include as a minimum:

(A) An identification of the project with a brief description;

(B) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project;

(C) A listing of places where copies of the EIR may be examined; and

(D) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered as ways of avoiding or reducing the significant effects of the project.

(3) The Lead Agency shall prepare responses to comments received during the review period.

(4) Before approving the project, the decision maker in the Lead Agency shall:

(A) Consider the information in the EIR including comments received during the review period and responses to those comments,

(B) Decide either on its own or on a staff recommendation whether the EIR is adequate for the project at hand, and

(C) Make or require certification to be made as described in Section 15090.

(D) Make findings as provided in Sections 15091 and 15093 as necessary.

(5) After making a decision on the project, the Lead Agency shall file a Notice of Determination.

(c) An EIR prepared for an earlier project may also be used as part of an Initial Study to document a finding that a later project will not have a significant effect. In this situation a Negative Declaration will be prepared.

(d) An EIR prepared for an earlier project shall not be used as the EIR for a later project if any of the conditions described in Section 15162 would require preparation of a subsequent or supplemental EIR.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21100, 21151, and 21165, Public Resources Code.

15154. PROJECTS NEAR AIRPORTS

(a) When a lead agency prepares an EIR for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted for a project within two nautical miles of a public airport or public use airport, the agency shall utilize the Airport Land Use Planning Handbook published by Caltrans' Division of Aeronautics to assist in the preparation of the EIR relative to potential airport-related safety hazards and noise problems.

(b) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project described in subdivision (a) unless the lead agency considers whether the project will

result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21096, Public Resources Code.

15155. CITY OR COUNTY CONSULTATION WITH WATER AGENCIES.

(a) The following definitions are applicable to this section.

(1) A "water-demand project" means:

(A) A residential development of more than 500 dwelling units.

(B) A shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.

(C) A commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.

(D) A hotel or motel, or both, having more than 500 rooms.

(E) An industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.

(F) A mixed-use project that includes one or more of the projects specified in subdivisions (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), and (a)(1)(G) of this section.

(G) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

(H) For public water systems with fewer than 5,000 service connections, a project that meets the following criteria:

1. A proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of a public water system's existing service connections; or

2. A mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in the number of the public water system's existing service connections.

(2) "Public water system" means a system for the provision of piped water to the public for human consumption that has 3000 or more service connections. A public water system includes all of the following:

(A) Any collection, treatment, storage, and distribution facility under control of the operator of the system which is used primarily in connection with the system.

(B) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system.

(C) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(3) "Water acquisition plans" means any plans for acquiring additional water supplies prepared by the public water system or a city or county lead agency pursuant to subdivision (a) of section 10911 of the Water Code.

(4) "Water assessment" means the water supply assessment that must be prepared by the governing body of a public water system, or the city or county lead agency, pursuant to and in compliance with sections 10910 to 10915 of the Water Code, and that includes, without

limitation, the elements of the assessment required to comply with subdivisions (d), (e), (f), and (g) of section 10910 of the Water Code.

(5) "City or county lead agency" means a city or county, acting as lead agency, for purposes of certifying or approving an environmental impact report, a negative declaration, or a mitigated negative declaration for a water-demand project.

(b) Subject to section 15155, subdivision (d) below, at the time a city or county lead agency determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration, or any supplement thereto, is required for the water-demand project, the city or county lead agency shall take the following steps:

(1) The city or county lead agency shall identify any water system that either: (A) is a public water system that may supply water to the water-demand project, or (B) that may become such a public water system as a result of supplying water to the water-demand project. The city or county lead agency shall request the governing body of each such public water system to determine whether the projected water demand associated with a water-demand project was included in the most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with section 10610) of the Water Code, and to prepare a water assessment approved at a regular or special meeting of that governing body.

(2) If the city or county lead agency is not able to identify any public water system that may supply water for the water-demand project, the city or county lead agency shall prepare a water assessment after consulting with any entity serving domestic water supplies whose service area includes the site of the water-demand project, the local agency formation commission, and the governing body of any public water system adjacent to the site of the water-demand project. The governing body of the city or county lead agency must approve the water assessment prepared pursuant to this section at a regular or special meeting.

(c) The city or county lead agency shall grant any reasonable request for an extension of time that is made by the governing body of a public water system preparing the water assessment, provided that the request for an extension of time is made within 90 days after the date on which the governing body of the public water system received the request to prepare a water assessment. If the governing body of the public water system fails to request and receive an extension of time, or fails to submit the water assessment notwithstanding the 30-day extension, the city or county lead agency may seek a writ of mandamus to compel the governing body of the public water system to comply with the requirements of Part 2.10 of Division 6 (commencing with section 10910) of the Water Code relating to the submission of the water assessment.

(d) If a water-demand project has been the subject of a water assessment, no additional water assessment shall be required for subsequent water-demand projects that were included in such larger water-demand project if all of the following criteria are met:

(1) The entity completing the water assessment had concluded that its water supplies are sufficient to meet the projected water demand associated with the larger water-demand project, in addition to the existing and planned future uses, including, but not limited to, agricultural and industrial uses; and

(2) None of the following changes has occurred since the completion of the water assessment for the larger water-demand project:

(A) Changes in the larger water-demand project that result in a substantial increase in water demand for the water-demand project.

(B) Changes in the circumstances or conditions substantially affecting the ability of the public water system or the water supplying city or county identified in the water assessment to provide a sufficient supply of water for the water demand project.

(C) Significant new information becomes available which was not known and could not have been known at the time when the entity had reached the conclusion in subdivision (d)(1).

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan in the EIR, negative declaration, or mitigated negative declaration, or any supplement thereto, prepared for the water-demand project, and may include an evaluation of the water assessment and water acquisition plan information within such environmental document. The city or county lead agency shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If a city or county lead agency determines that water supplies will not be sufficient, the city or county lead agency shall include that determination in its findings for the water-demand project.

Note: Authority Cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code, Sections 10910–10915 of the Water Code.

Article 11. Types of EIRs

SECTIONS 15160 TO 15170

15160. GENERAL

This article describes a number of examples of variations in EIRs as the documents are tailored to different situations and intended uses. These variations are not exclusive. Lead Agencies may use other variations consistent with the Guidelines to meet the needs of other circumstances. All EIRs must meet the content requirements discussed in Article 9 beginning with Section 15120.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21061, 21100, and 21151, Public Resources Code.

15161. PROJECT EIR

The most common type of EIR examines the environmental impacts of a specific development project. This type of EIR should focus primarily on the changes in the environment that would result from the development project. The EIR shall examine all phases of the project including planning, construction, and operation.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21061, 21100, and 21151, Public Resources Code.

15162. SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

(c) Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subdivision (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

(d) A subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065; *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467; and *Fort Mojave Indian Tribe v. California Department of Health Services et al.* (1995) 38 Cal.App.4th 1574.

15163. SUPPLEMENT TO AN EIR

(a) The Lead or Responsible Agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

(1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

(b) The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

(c) A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.

(d) A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.

(e) When the agency decides whether to approve the project, the decision-making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21166, Public Resources Code.

15164. ADDENDUM TO AN EIR OR NEGATIVE DECLARATION

(a) The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

(b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

(c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.

(d) The decision making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.

(e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065; and *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467.

15165. MULTIPLE AND PHASED PROJECTS

Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the Lead Agency shall prepare a single program EIR for the ultimate project as described in Section 15168. Where an individual project is a necessary precedent for action on a larger project, or commits the Lead Agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21061, 21100, and 21151, Public Resources Code; *Whitman v. Board of Supervisors*, (1979) 88 Cal. App. 3d 397.

15166. EIR AS PART OF A GENERAL PLAN

(a) The requirements for preparing an EIR on a local general plan, element, or amendment thereof will be satisfied by using the general plan, or element document, as the EIR and no separate EIR will be required, if:

  (1) The general plan addresses all the points required to be in an EIR by Article 9 of these Guidelines, and

  (2) The document contains a special section or a cover sheet identifying where the general plan document addresses each of the points required.

(b) Where an EIR rather than a Negative Declaration has been prepared for a general plan, element, or amendment thereto, the EIR shall be forwarded to the State Clearinghouse for review. The requirement shall apply regardless of whether the EIR is prepared as a separate document or as a part of the general plan or element document.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, 21083, 21100, 21104, 21151, and 21152, Public Resources Code.

15167. STAGED EIR

(a) Where a large capital project will require a number of discretionary approvals from government agencies and one of the approvals will occur more than two years before construction will begin, a staged EIR may be prepared covering the entire project in a general form. The staged EIR shall evaluate the proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of the entire project. The aspect of the project before the public agency for approval shall be discussed with a greater degree of specificity.

(b) When a staged EIR has been prepared, a supplement to the EIR shall be prepared when a later approval is required for the project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

(c) Where a statute such as the Warren-Alquist Energy Resources Conservation and Development Act provides that a specific agency shall be the Lead Agency for a project and requires the Lead Agency to prepare an EIR, a Responsible Agency which must grant an approval for the project before the Lead Agency has completed the EIR may prepare and consider a staged EIR.

(d) An agency requested to prepare a staged EIR may decline to act as the Lead Agency if it determines, among other factors, that:

(1) Another agency would be the appropriate Lead Agency; and

(2) There is no compelling need to prepare a staged EIR and grant an approval for the project before the appropriate Lead Agency will take its action on the project.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21003, Public Resources Code.

15168. PROGRAM EIR

(a) General. A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

(1) Geographically,

(2) A logical parts in the chain of contemplated actions,

(3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or

(4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

(b) Advantages. Use of a program EIR can provide the following advantages. The program EIR can:

(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,

(2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis,

(3) Avoid duplicative reconsideration of basic policy considerations,

(4) Allow the Lead Agency to consider broad policy alternatives and programwide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts, and

(5) Allow reduction in paperwork.

(c) Use with Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new Initial Study would need to be prepared leading to either an EIR or a Negative Declaration.

(2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

(5) A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

(d) Use with Subsequent EIRs and Negative Declarations. A program EIR can be used to simplify the task of preparing environmental documents on later parts of the program. The program EIR can:

(1) Provide the basis in an Initial Study for determining whether the later activity may have any significant effects.

(2) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives, and other factors that apply to the program as a whole.

(3) Focus an EIR on a subsequent project to permit discussion solely of new effects which had not been considered before.

(e) Notice with Later Activities. When a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to rely on the program EIR for CEQA compliance, the notice for the activity shall include a statement that:

(1) This activity is within the scope of the program approved earlier, and

(2) The program EIR adequately describes the activity for the purposes of CEQA.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21003, Public Resources Code; *County of Inyo v. Yorty*, (1973) 32 Cal. App. 3d 795.

15169. MASTER ENVIRONMENTAL ASSESSMENT

(a) General. A public agency may prepare a Master Environmental Assessment, inventory, or data base for all, or a portion of, the territory subject to its control in order to provide information which may be used or referenced in EIRs or Negative Declarations. Neither the content, the format, nor the procedures to be used to develop a Master Environmental Assessment are prescribed by these Guidelines. The descriptions contained in this section are advisory. A Master Environmental Assessment is suggested solely as an approach to identify and organize environmental information for a region or area of the state.

(b) Contents. A Master Environmental Assessment may contain an inventory of the physical and biological characteristics of the area for which it is prepared and may contain such additional data and information as the public agency determines is useful or necessary to describe environmental characteristics of the area. It may include identification of existing levels of quality and supply of air and water, capacities and levels of use of existing services and facilities, and generalized incremental effects of different categories of development projects by type, scale, and location.

(c) Preparation.

(1) A Master Environmental Assessment or inventory may be prepared in many possible ways. For example, a Master Environmental Assessment may be prepared as a special, comprehensive study of the area involved, as part of the EIR on a general plan, or as a data base accumulated by indexing EIRs prepared for individual projects or programs in the area involved.

(2) The information contained in a Master Environmental Assessment should be reviewed periodically and revised as needed so that it is accurate and current.

(3) When advantageous to do so, Master Environmental Assessments may be prepared through a joint exercise of powers agreement with neighboring local agencies or with the assistance of the appropriate Council of Governments.

(d) Uses.

(1) A Master Environmental Assessment can identify the environmental characteristics and constraints of an area. This information can be used to influence the design and location of individual projects.

(2) A Master Environmental Assessment may provide information agencies can use in initial studies to decide whether certain environmental effects are likely to occur and whether certain effects will be significant.

(3) A Master Environmental Assessment can provide a central source of current information for use in preparing individual EIRs and Negative Declarations.

(4) Relevant portions of a Master Environmental Assessment can be referenced and summarized in EIRs and Negative Declarations.

(5) A Master Environmental Assessment can assist in identifying long range, areawide, and cumulative impacts of individual projects proposed in the area covered by the assessment.

(6) A Master Environmental Assessment can assist a city or county in formulating a general plan or any element of such a plan by identifying environmental characteristics and constraints that need to be addressed in the general plan.

(7) A Master Environmental Assessment can serve as a reference document to assist public agencies which review other environmental documents dealing with activities in the area covered by the assessment. The public agency preparing the assessment should forward a completed copy to each agency which will review projects in the area.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21003, Public Resources Code.

15170. JOINT EIR-EIS

A Lead Agency under CEQA may work with a federal agency to prepare a joint document which will meet the requirements of both CEQA and NEPA. Use of such a joint document is described in Article 14, beginning with Section 15220.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21083.5 and 21083.7, Public Resources Code.

Article 11.5 Master Environmental Impact Report

SECTIONS 15175 TO 15179.5

15175. MASTER EIR

(a) The Master EIR procedure is an alternative to preparing a project EIR, staged EIR, or program EIR for certain projects which will form the basis for later decision making. It is intended to streamline the later environmental review of projects or approval included within the project, plan or program analyzed in the Master EIR. Accordingly, a Master EIR shall, to the greatest extent feasible, evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of subsequent projects.

(b) A lead agency may prepare a Master EIR for any of the following classes of projects:

(1) A general plan, general plan update, general plan element, general plan amendment, or specific plan.

(2) Public or private projects that will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(3) A project that consists of smaller individual projects which will be carried out in phases.

(4) A rule or regulation which will be implemented by later projects.

(5) Projects that will be carried out or approved pursuant to a development agreement.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A plan proposed by a local agency, including a joint powers authority, for the reuse of a federal military base or reservation that has been closed or is proposed for closure by the federal government.

(8) A regional transportation plan or congestion management plan.

(9) Regulations adopted by the California Department of Fish and Game for the regulation of hunting and fishing.

(c) A lead agency may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a Master EIR.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21156, 21157, and 21089, Public Resources Code.

15176. CONTENTS OF A MASTER EIR

A lead agency shall include in a Master EIR all of the following:

(a) A detailed discussion as required by Section 15126.

(b) A description of anticipated subsequent projects that are within the scope of the Master EIR, including information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to all of the following:

(1) The specific type of project anticipated to be undertaken such as a single family development, office-commercial development, sewer line installation or other activities.

(2) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and with regard to a public works facility, its anticipated capacity and service area.

(3) The anticipated location for any subsequent development projects, and, consistent with the rule of reason set forth in Section 15126.6(f), alternative locations for any such projects.

(4) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects, or an explanation as to why practical planning considerations render it impractical to identify any such program or scheduling or other device at the time of preparing the Master EIR.

(c) A description of potential impacts of anticipated projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the Master EIR. This description shall not be construed as a limitation on the impacts which may be considered in a focused EIR.

(d) Where a Master EIR is prepared in connection with a project identified in subdivision (b)(1) of section 15175, the anticipated subsequent projects included within a Master EIR may consist of later planning approvals, including parcel-specific approvals, consistent with the overall planning decision (e.g., general plan, or specific plan, or redevelopment plan) for which the Master EIR has been prepared. Such subsequent projects shall be adequately described for purposes of subdivision (b) or of this section (15176) if the Master EIR and any other documents embodying or relating to the overall planning decision identify the land use designations and the permissible densities and intensities of use for the affected parcel(s). The proponents of such subsequent projects shall not be precluded from relying on the Master EIR solely because that document did not specifically identify or list, by name, the subsequent project as ultimately proposed for approval.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21157, Public Resources Code.

15177. SUBSEQUENT PROJECTS WITHIN THE SCOPE OF THE MEIR

(a) After a Master EIR has been prepared and certified, subsequent projects which the lead agency determines as being within the scope of the Master EIR will be subject to only limited environmental review.

(b) Except as provided in subdivision (2) of this subdivision, neither a new environmental document nor the preparation of findings pursuant to section 15091 shall be required of a subsequent project when all the following requirements are met:

(1) The lead agency for the subsequent project is the lead agency or any responsible agency identified in the Master EIR.

(2) The lead agency for the subsequent project prepares an initial study on the proposal. The initial study shall analyze whether the subsequent project was described in the Master EIR and whether the subsequent project may cause any additional significant effect on the environment which was not previously examined in the Master EIR.

(3) The lead agency for the subsequent project determines, on the basis of written findings, that no additional significant environmental effect will result from the proposal, no new additional mitigation measures or alternatives may be required, and that the project is within the scope of the Master EIR. "Additional significant environmental effect" means any project-specific effect which was not addressed as a significant effect in the Master EIR.

(c) Whether a subsequent project is within the scope of the Master EIR is a question of fact to be determined by the lead agency based upon a review of the initial study to determine whether there are additional significant effects or new additional mitigation measures or alternatives required for the subsequent project that are not already discussed in the Master EIR.

(d) Prior to approval of the proposed subsequent project, the lead agency shall incorporate all feasible mitigation measures or feasible alternatives appropriate to the project as set forth in the Master EIR and provide notice in the manner required by Section 15087.

(e) When the lead agency approves a project pursuant to this section, the lead agency shall file a notice in the manner required by Section 15075.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21157, 21157.6 and 21158, Public Resources Code.

15178. SUBSEQUENT PROJECTS IDENTIFIED IN THE MEIR

(a) When a proposed subsequent project is identified in the Master EIR, but the lead agency cannot make a determination pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, and the lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is adequate for the subsequent project, the lead agency shall prepare a mitigated negative declaration or a focused EIR if, after preparing an initial study, the lead agency determines that the project may result in new or additional significant effects. Whether the cumulative impacts, growth inducing impacts and irreversible significant effects analyses are adequate is a question of fact to be determined by the lead agency based upon a review of the proposed subsequent project in light of the Master EIR.

(b) A lead agency shall prepare a mitigated negative declaration for any proposed subsequent project if both of the following occur:

(1) The initial study prepared pursuant to Section 15177 has identified potentially new or additional significant environmental effects that were not analyzed in the Master EIR; and

(2) Feasible mitigation measures or alternatives will be incorporated to revise the subsequent project before the negative declaration is released for public review pursuant to Section 15073 in order to avoid or mitigate the identified effects to a level of insignificance.

(c) A lead agency shall prepare a focused EIR if the subsequent project may have a significant effect on the environment and a mitigated negative declaration pursuant to subdivision (b) of this section cannot be prepared.

(1) The focused EIR shall incorporate by reference the Master EIR and analyze only the subsequent project's additional significant environmental effects and any new or additional mitigation measures or alternatives that were not identified and analyzed by the Master EIR. "Additional significant environmental effects" are those project-specific effects on the environment which were not addressed as significant in the Master EIR.

(2) A focused EIR need not examine those effects which the lead agency, prior to public release of the focused EIR, finds, on the basis of the initial study, related documents, and commitments from the proponent of a subsequent project, have been mitigated in one of the following manners:

(A) Mitigated or avoided as a result of mitigation measures identified in the Master EIR which the lead agency will require as part of the approval of the subsequent project;

(B) Examined at a sufficient level of detail in the Master EIR to enable those significant effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions of approval, or by other means in connection with approval of the subsequent project; or

(C) The mitigation or avoidance of which is the responsibility of and within the jurisdiction of another public agency and is, or can and should be, undertaken by that agency.

(3) The lead agency's findings pursuant to subdivision (2) shall be included in the focused EIR prior to public release pursuant to Section 15087.

(4) A focused EIR prepared pursuant to this section shall analyze any significant environmental effects when:

(A) Substantial new or additional information shows that the adverse environmental effect may be more significant than was described in the Master EIR; or

(B) Substantial new or additional information shows that mitigation measures or alternatives which were previously determined to be infeasible are feasible and will avoid or reduce the significant effects of the subsequent project to a level of insignificance.

(d) A lead agency shall file a notice of determination shall be filed pursuant to Section 15075 if a project has been approved for which a mitigated negative declaration has been prepared pursuant to this section and a notice of determination shall be filed pursuant to Section 15094 if a project has been approved for which a focused EIR has been prepared pursuant to this section.

(e) When a lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is inadequate for the subsequent project, the subsequent project is no longer eligible for the limited environmental review available under the Master EIR process and shall be reviewed according to Article 7 (commencing with Section 15080) of these guidelines. The lead agency shall tier the project specific EIR upon the Master EIR to the extent feasible under Section 15152.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21081(a)(2), 21157.5 and 21158, Public Resources Code.

15179. LIMITATIONS ON THE USE OF THE MASTER EIR

(a) The certified Master EIR shall not be used for a subsequent project described in the Master EIR in accordance with this article if either:

(1) The Master EIR was certified more than five years prior to the filing of an application for a subsequent project except as set forth in subsection (b) below, or

(2) After the certification of the Master EIR, a project not described in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR for any subsequent project that was described in the Master EIR.

(b) A Master EIR that was certified more than five years prior to the filing of an application for a subsequent project described in the Master EIR may be used in accordance with this article to review such a subsequent project if the lead agency reviews the adequacy of the Master EIR and takes either of the following steps:

(1) Finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(2) Prepares an initial study, and, pursuant to the findings of the initial study, does either (A) or (B) below:

(A) certifies a subsequent or supplemental EIR that updates or revises the Master EIR and which either:

1. is incorporated into the previously certified Master EIR, or

2. references any deletions, additions or other modifications to the previously certified Master EIR.;

(B) approves a mitigated negative declaration that addresses substantial changes that have occurred with respect to the circumstances under which the Master EIR was certified or the new information that was not known and could not have been known at the time the Master EIR was certified.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21157.6, Public Resources Code.

15179.5. FOCUSED EIRS AND SMALL PROJECTS

(a) When a project is a multiple family residential development of 100 units or less or is a residential and commercial or retail mixed-use commercial development of not more then 100,000 square feet, whether or not the project is identified in the Master EIR, a focused EIR shall be prepared pursuant to this section when the following conditions are met:

(1) The project is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an EIR was prepared within five years of certification of the focused EIR; and

(2) The parcel on which the project is to be developed is either:

(A) Surrounded by immediately contiguous urban development;

(B) Previously developed with urban uses; or

(C) Within one-half mile of an existing rail transit station.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project, or which substantial new information shows will be more significant than described in the prior environmental impact report. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

(c) This section does not apply where the lead agency can make a finding pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, where the lead agency can prepare a mitigated negative declaration or focused EIR pursuant to Section 15178, or where, pursuant to Section 15162 or Section 15163, the environmental impact report referenced in subdivision (a)(1) of this section must be updated through the preparation of a subsequent environmental impact report or a supplemental environmental impact report.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21158.5, Public Resources Code.

Article 12. Special Situations

SECTIONS 15180 TO 15190

15180. REDEVELOPMENT PROJECTS

(a) An EIR for a redevelopment plan may be a Master EIR, a program EIR, or a project EIR. An EIR for a redevelopment plan must specify whether it is a Master EIR, a program EIR, or a project EIR.

(b) If the EIR for a redevelopment plan is a project EIR, all public and private activities or undertakings pursuant to or in furtherance of the redevelopment plan shall constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

If a project EIR has been certified for the redevelopment plan, no subsequent EIRs are required for individual components of the redevelopment plan unless a subsequent EIR or a supplement to an EIR would be required by Section 15162 or 15163.

(c) If the EIR for a redevelopment plan is a Master EIR, subsequent projects which the lead agency determines as being within the scope of the Master EIR will be subject to the review required

by Section 15177. If the EIR for a redevelopment plan is a program EIR, subsequent activities in the program will be subject to the review required by Section 15168.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21090 and 21166, Public Resources Code.

15181. [DELETED]

15182. RESIDENTIAL PROJECTS PURSUANT TO A SPECIFIC PLAN

(a) Exemption. Where a public agency has prepared an EIR on a specific plan after January 1, 1980, no EIR or negative declaration need be prepared for a residential project undertaken pursuant to and in conformity to that specific plan if the project meets the requirements of this section.

(b) Scope. Residential projects covered by this section include but are not limited to land subdivisions, zoning changes, and residential planned unit developments.

(c) Limitation. This section is subject to the limitation that if after the adoption of the specific plan, an event described in Section 15162 should occur, this exemption shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the Lead Agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR.

(d) Fees. The Lead Agency has authority to charge fees to applicants for projects which benefit from this section. The fees shall be calculated in the aggregate to defray but not to exceed the cost of developing and adopting the specific plan including the cost of preparing the EIR.

(e) Statute of Limitations. A court action challenging the approval of a project under this section for failure to prepare a supplemental EIR shall be commenced within 30 days after the Lead Agency's decision to carry out or approve the project in accordance with the specific plan.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 65453, Government Code.

15183. PROJECTS CONSISTENT WITH A COMMUNITY PLAN OR ZONING

(a) CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies.

(b) In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:

(1) Are peculiar to the project or the parcel on which the project would be located,

(2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan, or community plan, with which the project is consistent,

(3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or

(4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

(c) If an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, as contemplated by subdivision (e) below, then an additional EIR need not be prepared for the project solely on the basis of that impact.

(d) This section shall apply only to projects which meet the following conditions:

(1) The project is consistent with:

(A) A community plan adopted as part of a general plan,

(B) A zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development, or

(C) A general plan of a local agency, and

(2) An EIR was certified by the lead agency for the zoning action, the community plan, or the general plan.

(e) This section shall limit the analysis of only those significant environmental effects for which:

(1) Each public agency with authority to mitigate any of the significant effects on the environment identified in the planning or zoning action undertakes or requires others to undertake mitigation measures specified in the EIR which the lead agency found to be feasible, and

(2) The lead agency makes a finding at a public hearing as to whether the feasible mitigation measures will be undertaken.

(f) An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect. The finding shall be based on substantial evidence which need not include an EIR. Such development policies or standards need not apply throughout the entire city or county, but can apply only within the zoning district in which the project is located, or within the area subject to the community plan on which the lead agency is relying. Moreover, such policies or standards need not be part of the general plan or any community plan, but can be found within another pertinent planning document such as a zoning ordinance. Where a city or county, in previously adopting uniformly applied development policies or standards for imposition on future projects, failed to make a finding as to whether such policies or standards would substantially mitigate the effects of future projects, the decision-making body of the city or county, prior to approving such a future project pursuant to this section, may hold a public hearing for the purpose of considering whether, as applied to the project, such standards or policies would substantially mitigate the effects of the project. Such a public hearing need only be held if the city or county decides to apply the standards or policies as permitted in this section.

(g) Examples of uniformly applied development policies or standards include, but are not limited to:

(1) Parking ordinances.

(2) Public access requirements.

(3) Grading ordinances.

(4) Hillside development ordinances.

(5) Flood plain ordinances.

(6) Habitat protection or conservation ordinances.

(7) View protection ordinances.

(8) Requirements for reducing greenhouse gas emissions, as set forth in adopted land use plans, policies, or regulations.

(h) An environmental effect shall not be considered peculiar to the project or parcel solely because no uniformly applied development policy or standard is applicable to it.

(i) Where the prior EIR relied upon by the lead agency was prepared for a general plan or community plan that meets the requirements of this section, any rezoning action consistent with the general plan or community plan shall be treated as a project subject to this section.

(1) "Community plan" is defined as a part of the general plan of a city or county which applies to a defined geographic portion of the total area included in the general plan, includes or references each of the mandatory elements specified in Section 65302 of the Government Code, and contains specific development policies and implementation measures which will apply those policies to each involved parcel.

(2) For purposes of this section, "consistent" means that the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan, community plan or zoning action for which an EIR has been certified, and that the project complies with the density-related standards contained in that plan or zoning. Where the zoning ordinance refers to the general plan or community plan for its density standard, the project shall be consistent with the applicable plan.

(j) This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR. If a significant offsite or cumulative impact was adequately discussed in the prior EIR, then this section may be used as a basis for excluding further analysis of that offsite or cumulative impact.

Note: Authority cited: Section 21083, 21083.05, Public Resources Code; Reference: Section 21083.3, 21083.05, Public Resources Code.

15183.5. TIERING AND STREAMLINING THE ANALYSIS OF GREENHOUSE GAS EMISSIONS

(a) Lead agencies may analyze and mitigate the significant effects of greenhouse gas emissions at a programmatic level, such as in a general plan, a long range development plan, or a separate plan to reduce greenhouse gas emissions. Later project-specific environmental documents may tier from and/or incorporate by reference that existing programmatic review. Project-specific environmental documents may rely on an EIR containing a programmatic analysis of greenhouse gas emissions as provided in section 15152 (tiering), 15167 (staged EIRs) 15168 (program EIRs), 15175–15179.5 (Master EIRs), 15182 (EIRs Prepared for Specific Plans), and 15183 (EIRs Prepared for General Plans, Community Plans, or Zoning).

(b) Plans for the Reduction of Greenhouse Gas Emissions. Public agencies may choose to analyze and mitigate significant greenhouse gas emissions in a plan for the reduction of greenhouse gas emissions or similar document. A plan to reduce greenhouse gas emissions may be used in a cumulative impacts analysis as set forth below. Pursuant to sections 15064(h)(3) and 15130(d), a lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project complies with the requirements in a previously adopted plan or mitigation program under specified circumstances.

(1) Plan Elements. A plan for the reduction of greenhouse gas emissions should:

(A) Quantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area;

(B) Establish a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable;

(C) Identify and analyze the greenhouse gas emissions resulting from specific actions or categories of actions anticipated within the geographic area;

(D) Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;

(E) Establish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specified levels;

(F) Be adopted in a public process following environmental review.

(2) Use with Later Activities. A plan for the reduction of greenhouse gas emissions, once adopted following certification of an EIR or adoption of an environmental document, may be used in the cumulative impacts analysis of later projects. An environmental document that relies on a greenhouse gas reduction plan for a cumulative impacts analysis must identify those requirements specified in the plan that apply to the project, and, if those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures applicable to the project. If there is substantial evidence that the effects of a particular project may be cumulatively considerable, notwithstanding the project's compliance with the specified requirements in the plan for the reduction of greenhouse gas emissions, an EIR must be prepared for the project.

(c) Special Situations. As provided in Public Resources Code sections 21155.2 and 21159.28, environmental documents for certain residential and mixed use projects, and transit priority projects, as defined in section 21155, that are consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in an applicable sustainable communities strategy or alternative planning strategy need not analyze global warming impacts resulting from cars and light duty trucks. A lead agency should consider whether such projects may result in greenhouse gas emissions resulting from other sources, however, consistent with these Guidelines.

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Section 65457, Gov. Code; Sections 21003, 21061, 21068.5, 21081(a)(2), 21083.05, 21083.3, 21081.6, 21093, 21094, 21100, 21151, 21155, 21155.2, 21156, 21157, 21157.1, 21157.5, 21157.6, 21158, 21158.5, 21159.28, Pub. Resources Code; *California Native Plant Society v. County of El Dorado* (2009) 170 Cal.App.4th 1026; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099.

15184. STATE MANDATED LOCAL PROJECTS

Whenever a state agency issues an order which requires a local agency to carry out a project subject to CEQA, the following rules apply:

(a) If an EIR is prepared for the project, the local agency shall limit the EIR to considering those factors and alternatives which will not conflict with the order.

(b) If a local agency undertakes a project to implement a rule or regulation imposed by a certified state environmental regulatory program listed in Section 15251, the project shall be exempt from CEQA with regard to the significant effects analyzed in the document prepared by the state agency as a substitute for an EIR. The local agency shall comply with CEQA with regard to any site-specific effect of the project which was not analyzed by the certified state agency as a significant effect on the environment. The local agency need not re-examine the general environmental effects of the state rule or regulation.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080, 21080.5, and 21154, Public Resources Code.

15185. ADMINISTRATIVE APPEALS

(a) Where an agency allows administrative appeals upon the adequacy of an environmental document, an appeal shall be handled according to the procedures of that agency. Public notice shall be handled in accordance with individual agency requirements and Section 15202(e).

(b) The decision-making body to which an appeal has been made shall consider the environmental document and make findings under Sections 15091 and 15093 if appropriate.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21082 and 21083, Public Resources Code.

15186. SCHOOL FACILITIES

(a) CEQA establishes a special requirement for certain school projects, as well as certain projects near schools, to ensure that potential health impacts resulting from exposure to hazardous materials, wastes, and substances will be carefully examined and disclosed in a negative declaration or EIR, and that the lead agency will consult with other agencies in this regard.

(b) Before certifying an EIR or adopting a negative declaration for a project located within one-fourth mile of a school that involves the construction or alteration of a facility that might reasonably be anticipated to emit hazardous air emissions, or that would handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the state threshold quantity specified in subdivision (j) of Section 25532 of the Health and Safety code, that may impose a health or safety hazard to persons who would attend or would be employed at the school, the lead agency must do both of the following:

(1) Consult with the affected school district or districts regarding the potential impact of the project on the school; and

(2) Notify the affected school district or districts of the project, in writing, not less than 30 days prior to approval or certification of the negative declaration or EIR.

(c) When the project involves the purchase of a school site or the construction of a secondary or elementary school by a school district, the negative declaration or EIR prepared for the project shall not be adopted or certified unless:

(1) The negative declaration, mitigated negative declaration, or EIR contains sufficient information to determine whether the property is:

(A) The site of a current or former hazardous waste or solid waste disposal facility and, if so, whether wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) The site of one or more buried or above ground pipelines which carry hazardous substances, acutely hazardous materials, or hazardous wastes, as defined in Division 20 of the Health and Safety Code. This does not include a natural gas pipeline used only to supply the school or neighborhood.

(D) Within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) The lead agency has notified in writing and consulted with the county or city administering agency (as designated pursuant to Section 25502 of the Health and Safety Code) and with any air pollution control district or air quality management district having jurisdiction, to

identify facilities within one-fourth mile of the proposed school site which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous material, substances, or waste. The notice shall include a list of the school sites for which information is sought. Each agency or district receiving notice shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. If any such agency or district fails to respond within that time, the negative declaration or EIR shall be conclusively presumed to comply with this section as to the area of responsibility of that agency.

(3) The school district makes, on the basis of substantial evidence, one of the following written findings:

(A) Consultation identified none of the facilities specified in paragraph (2).

(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

1. The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

2. Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, mitigate all chronic or accidental hazardous air emissions to levels that do not constitute any actual or potential public health danger to persons who would attend or be employed at the proposed school. When the school district board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

   This finding shall be in addition to any findings which may be required pursuant to Sections 15074, 15091 or 15093.

3. For a school site with boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the school district determines, through a health risk assessment pursuant to subdivision (b)(2) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in subsection (c)(2) exist, but conditions in subdivisions (c)(3)(B)(1), (2) or (3) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the school district makes this finding, the school board shall prepare an EIR and adopt a statement of overriding considerations.

(d) When the lead agency has carried out the consultation required by paragraph (2) of subdivision (b), the negative declaration or EIR shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility.

(e) The following definitions shall apply for the purposes of this section:

(1) "Acutely hazardous material," is as defined in 22 C.C.R. § 66260.10.

(2) "Administering agency," is as defined in Section 25501 of the Health and Safety Code.

(3) "Extremely hazardous substance," is as defined in subdivision (g)(2)(B) of Section 25532 of the Health and Safety Code and listed in Section 2770.5, Table 3, of Title 19 of the California Code of Regulations.

(4) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(5) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

(6) "Handle" means to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion.

(7) "Hazardous air emissions," is as defined in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(8) "Hazardous substance," is as defined in Section 25316 of the Health and Safety Code.

(9) "Hazardous waste," is as defined in Section 25117 of the Health and Safety Code.

(10) "Hazardous waste disposal site," is as defined in Section 25114 of the Health and Safety Code.

Note: Authority cited: Sections Section 21083, Public Resources Code. References: Sections 21151.4 and 21151.8, Public Resources Code.

15187. ENVIRONMENTAL REVIEW OF NEW RULES AND REGULATIONS

(a) At the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, establishing a performance standard, or establishing a treatment requirement, the California Air Resources Board, Department of Toxic Substances Control, Integrated Waste Management Board, State Water Resources Control Board, all regional water quality control boards, and all air pollution control districts and air quality management districts, as defined in Section 39025 of the Health and Safety Code, must perform an environmental analysis of the reasonably foreseeable methods by which compliance with that rule or regulation will be achieved.

(b) If an EIR is prepared by the agency at the time of adoption of a rule or regulation, it satisfies the requirements of this section provided that the document contains the information specified in subdivision (c) below. Similarly, for those State agencies whose regulatory programs have been certified by the Resources Agency pursuant to Section 21080.5 of the Public Resources Code, an environmental document prepared pursuant to such programs satisfies the requirements of this section, provided that the document contains the information specified in subdivision (c) below.

(c) The environmental analysis shall include at least the following:

(1) An analysis of reasonably foreseeable environmental impacts of the methods of compliance;

(2) An analysis of reasonably foreseeable feasible mitigation measures relating to those impacts; and

(3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation, which would avoid or eliminate the identified impacts.

(d) The environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites. The agency may utilize numerical ranges and averages where specific data is not available, but is not required to, nor should it, engage in speculation or conjecture.

(e) Nothing in this section shall require the agency to conduct a project level analysis.

(f) Nothing in this section is intended, or may be used, to delay the adoption of any rule or regulation for which this section requires an environmental analysis.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21159 and 21159.4, Public Resources Code.

15188. FOCUSED EIR FOR POLLUTION CONTROL EQUIPMENT

This section applies to projects consisting solely of the installation of pollution control equipment and other components necessary to the installation of that equipment which are undertaken for the purpose of complying with a rule or regulation which was the subject of an environmental analysis as described in Section 15187.

(a) The lead agency for the compliance project may prepare a focused EIR to analyze the effects of that project when the following occur:

  (1) the agency which promulgated the rule or regulation certified an EIR on that rule or regulation, or reviewed it pursuant to an environmental analysis prepared under a certified regulatory program and, in either case, the review included an assessment of growth inducing impacts and cumulative impacts of, and alternatives to, the project;

  (2) the focused EIR for the compliance project is certified within five years of the certified EIR or environmental analysis required by subdivision (a)(1); and

  (3) the EIR prepared in connection with the adoption of the rule or regulation need not be updated through the preparation of a subsequent EIR or supplemental EIR pursuant to section 15162 or section 15163.

(b) The discussion of significant environmental effects in the focused EIR shall be limited to project-specific, potentially significant effects which were not discussed in the environmental analysis required under Section 15187. No discussion of growth-inducing or cumulative impacts is required. Discussion of alternatives shall be limited to alternative means of compliance, if any, with the rule or regulation.

Note: Authority: Section 21083, Public Resources Code; Reference: Section 21159.1, Public Resources Code.

15189. COMPLIANCE WITH PERFORMANCE STANDARD OR TREATMENT REQUIREMENT RULE OR REGULATION

This section applies to projects consisting solely of compliance with a performance standard or treatment requirement which was the subject of an environmental analysis as described in Section 15187.

(a) If preparing a negative declaration, mitigated negative declaration or EIR on the compliance project the lead agency for the compliance project shall, to the greatest extent feasible, use the environmental analysis prepared pursuant to Section 15187. The use of numerical averages or ranges in the environmental analysis prepared under Section 15187 does not relieve the lead agency on the compliance project from its obligation to identify and evaluate the environmental effects of the project.

(b) Where the lead agency determines that an EIR is required for the compliance project, the EIR need address only the project-specific issues or other issues that were not discussed in sufficient detail in the environmental analysis prepared under Section 15187. The mitigation measures imposed by the lead agency shall be limited to addressing the significant effects on the environment of the compliance project. The discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21159.2, Public Resources Code.

15190. DEADLINES FOR COMPLIANCE WITH SECTIONS 15188 AND 15189

(a) The lead agency for a compliance project under either Section 15188 or Section 15189 shall determine whether an EIR or negative declaration should be prepared within 30 days of its determination that the application for the project is complete.

(b) Where the EIR will be prepared under contract to the lead agency for the compliance project, the agency shall issue a request for proposal for preparation of the EIR not later than 30 days after the deadline for response to the notice of preparation has expired. The contract shall be awarded within 30 days of the response date on the request for proposals.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21159.3, Public Resources Code.

15190.5. DEPARTMENT OF DEFENSE NOTIFICATION REQUIREMENT

(a) For purposes of this section, the following definitions are applicable.

(1) "Low-level flight path" means any flight path for any aircraft owned, maintained, or that is under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)" published by the United States National Imagery and Mapping Agency, or its successor, as of the date the military service gives written notification to a lead agency pursuant to subdivision (b).

(2) "Military impact zone" means any area, including airspace, that meets both of the following criteria:

(A) Is within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense; and

(B) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

(3) "Military service" means the United States Department of Defense or any branch of the United States Armed Forces.

(4) "Special use airspace" means the land area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that land area is established by the United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)" published by the United States National Imagery and Mapping Agency, or its successor, as of the date the military service gives written notification to a lead agency pursuant to subdivision (b).

(b) A military service may give written notification to a lead agency of the specific boundaries of a low-level flight path, military impact zone, or special use airspace, and provide the lead agency, in writing, the military contact office and address for the military service. If the notice references the specific boundaries of a low-level flight path, such notification must include a copy of the applicable United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)." If the notice references the specific boundaries of a special use airspace, such notification must include a copy of the applicable United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)."

(c) If a military service provides the written notification specified in subdivision (b) of this section, a lead agency must include the specified military contact office in the list of organizations and individuals receiving a notice of intent to adopt a negative declaration or a mitigated negative

declaration pursuant to Section 15072, in the list of organizations and individuals receiving a notice of preparation of an EIR pursuant to Section 15082, and in the list of organizations and individuals receiving a notice of availability of a draft EIR pursuant to Section 15087 for any project that meets all of the criteria specified below:

(1) The project to be carried out or approved by the lead agency is within the boundaries specified in subdivision (b).

(2) The project is one of the following:

(A) a project that includes a general plan amendment; or

(B) a project that is of statewide, regional, or areawide significance; or

(C) a project that relates to a public use airport and the area surrounding such airport which is required to be referred to the airport land use commission, or appropriately designated body, pursuant to Sections 21670–21679.5 of the Public Utilities Code.

(3) The project is not one of the actions described below. A lead agency does not need to send to the specified military contact office a notice of intent to adopt a negative declaration or a mitigated negative declaration, a notice of preparation of an EIR, or a notice of availability of a draft EIR for such actions.

(A) a response action taken pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(B) a response action taken pursuant to Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code.

(C) a project undertaken at a site in response to a corrective action order issued pursuant to Section 25187 of the Health and Safety Code.

The lead agency shall send the specified military contact office a notice of intent or a notice of availability sufficiently prior to adoption or certification of the environmental documents by the lead agency to allow the military service the review period provided under Section 15105.

(d) The effect or potential effect that a project may have on military activities does not itself constitute an adverse effect on the environment for the purposes of CEQA.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21098, Public Resources Code. § 15190.5.

Article 12.5 Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects

SECTIONS 15191 TO 15196

15191. DEFINITIONS

For purposes of this Article 12.5 only, the following words shall have the following meanings:

(a) "Agricultural employee" means a person engaged in agriculture, including: farming in all its branches, and, among other things, includes: (1) the cultivation and tillage of the soil, (2) dairying, (3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), (4) the raising of livestock, bees, furbearing animals, or poultry, and (5) any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market. This definition is subject to the following limitations:

This definition shall not be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code).

This definition shall not apply, or be construed to apply, to any employee who performs work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 U.S.C. Sec. 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above. As used in this definition, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation.

(b) "Census-defined place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

(c) "Community-level environmental review" means either of the following:

(1) An EIR certified on any of the following:

(A) A general plan.

(B) A revision or update to the general plan that includes at least the land use and circulation elements.

(C) An applicable community plan.

(D) An applicable specific plan.

(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(2) A negative declaration or mitigated negative declaration adopted as a subsequent environmental review document, following and based upon an EIR on a general plan, an applicable community plan, or an applicable specific plan, provided that the subsequent environmental review document is allowed by CEQA following a master EIR or a program EIR, or is required pursuant to Section 21166.

(d) "Developed open space" means land that meets all of the following criteria:

(1) land that is publicly owned, or financed in whole or in part by public funds,

(2) is generally open to, and available for use by, the public, and

(3) is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ball fields, enclosed child play areas, and picnic facilities.

Developed open space may include land that has been designated for acquisition by a public agency for developed open space but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(e) "Infill site" means a site in an urbanized area that meets one of the following criteria:

(1) The site has been previously developed for qualified urban uses; or

(2) The site has not been developed for qualified urban uses but all immediately adjacent parcels are developed with existing qualified urban uses; or

(3) The site has not been developed for qualified urban uses, no parcel within the site has been created within the past 10 years, and the site is situated so that:

(A) at least 75 percent of the perimeter of the site is adjacent to parcels that are developed with existing qualified urban uses at the time the lead agency receives an application for an approval; and

(B) the remaining 25 percent of the perimeter of the site adjoins parcels that had been previously developed for qualified urban uses.

(f) "Low- and moderate-income households" means "persons and families of low or moderate income" as defined in Section 50093 of the Health and Safety Code to mean persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the Department of Housing and Community Development, in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

(g) "Low-income households" means households of persons and families of very low and low income, which are defined in Sections 50093 and 50105 of the Health and Safety Code as follows:

(1) "Persons and families of low income" or "persons of low income" is defined in Section 50093 of the Health & Safety Code to mean persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.

(2) "Very low income households" is defined in Section 50105 of the Health & Safety Code to mean persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. "Very low income households" includes extremely low income households, as defined in Section 50106 of the Health & Safety Code.

(h) "Lower income households" is defined in Section 50079.5 of the Health and Safety Code to mean any of the following:

(1) "Lower income households," which means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(2) "Very low income households," which means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(3) "Extremely low income households," which means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as established and amended from time to time by the Secretary of Housing and Urban Development and defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations.

(i) "Major transit stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(j) "Project-specific effect" means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects.

(k) "Qualified urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(l) "Residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

(m) "Urbanized area" means either of the following:

(1) An incorporated city that either by itself or in combination with two contiguous incorporated cities has a population of at least 100,000 persons; or

(2) An unincorporated area that meets the requirements set forth in subdivision (m)(2)(A) and subdivision (m)(2)(B) below.

(A) The unincorporated area must meet one of the following location or density requirements:

1. The unincorporated area must be: (i) completely surrounded by one or more incorporated cities, (ii) have a population of at least 100,000 persons either by itself or in combination with the surrounding incorporated city or cities, and (iii) have a population density that at least equals the population density of the surrounding city or cities; or

2. The unincorporated area must be located within an urban growth boundary and have an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an "urban growth boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(B) The board of supervisors with jurisdiction over the unincorporated area must have taken the following steps:

1. The board has prepared a draft document by which the board would find that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that: (i) encourage compact development in a manner that promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and (ii) protects the environment, open space, and agricultural areas.

2. The board has submitted the draft document to OPR and allowed OPR thirty days to submit comments on the draft findings to the board.

3. No earlier than thirty days after submitting the draft document to OPR, the board has adopted a final finding in substantial conformity with the draft finding described in the draft document referenced in subdivision (m)(2)(B)(1) above.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21159.20, 21159.21, 21159.22, 21159.23, 21159.24, Public Resources Code.

15192. THRESHOLD REQUIREMENTS FOR EXEMPTIONS FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS

In order to qualify for an exemption set forth in sections 15193, 15194 or 15195, a housing project must meet all of the threshold criteria set forth below.

(a) The project must be consistent with:

(1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and

(2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed

complete, unless the zoning of project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project:

(1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.

(2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps have been taken in response to the results of this assessment:

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.

(h) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

(l) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(m) The project site is not located on developed open space.

(n) The project site is not located within the boundaries of a state conservancy.

(o) The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in sections 15193 to 15195.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.21, 21159.27, Public Resources Code.

15193. AGRICULTURAL HOUSING EXEMPTION

CEQA does not apply to any development project that meets the following criteria.

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project site meets the following size criteria:

(1) The project site is located in an area with a population density of at least 1,000 persons per square mile and is two acres or less in area; or

(2) The project site is located in an area with a population density of less than 1,000 persons per square mile and is five acres or less in area.

(c) The project meets the following requirements regarding location and number of units.

(1) If the proposed development project is located on a project site within city limits or in a census-defined place, it must meet the following requirements:

(A) The proposed project location must be within one of the following:

1. Incorporated city limits; or

2. A census defined place with a minimum population density of at least 5,000 persons per square mile; or

3. A census-defined place with a minimum population density of at least 1,000 persons per square mile, unless a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant.

(B) The proposed development project must be located on a project site that is adjacent, on at least two sides, to land that has been developed.

(C) The proposed development project must meet either of the following requirements:

1. Consist of not more than 45 units, or

2. Consist of housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(2) If the proposed development project is located on a project site zoned for general agricultural use, it must meet either of the following requirements:

(A) Consist of not more than 20 units, or

(B) Consist of housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(d) The project meets the following requirements regarding provision of housing for agricultural employees:

(1) The project must consist of the construction, conversion, or use of residential housing for agricultural employees.

(2) If the project lacks public financial assistance, then:

(A) The project must be affordable to lower income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years.

(3) If public financial assistance exists for the project, then:

(A) The project must be housing for very low, low-, or moderate-income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.22, Public Resources Code.

15194. AFFORDABLE HOUSING EXEMPTION

CEQA does not apply to any development project that meets the following criteria:

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project meets the following size criteria: the project site is not more than five acres in area.

(c) The project meets both of the following requirements regarding location:

(1) The project meets one of the following location requirements relating to population density:

(A) The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile.

(B) If the project consists of 50 or fewer units, the project site is located within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(C) The project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile and there is no reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(2) The project meets one of the following site-specific location requirements:

(A) The project site has been previously developed for qualified urban uses; or

(B) The parcels immediately adjacent to the project site are developed with qualified urban uses.

(C) The project site has not been developed for urban uses and all of the following conditions are met:

1. No parcel within the site has been created within 10 years prior to the proposed development of the site.
2. At least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses.
3. The existing remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses.

(d) The project meets both of the following requirements regarding provision of affordable housing.

(1) The project consists of the construction, conversion, or use of residential housing consisting of 100 or fewer units that are affordable to low-income households.

(2) The developer of the project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 30 years, at monthly housing costs deemed to be

"affordable rent" for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.23, Public Resources Code.

15195. RESIDENTIAL INFILL EXEMPTION

(a) Except as set forth in subdivision (b), CEQA does not apply to any development project that meets the following criteria:

(1) The project meets the threshold criteria set forth in section 15192; provided that with respect to the requirement in section 15192(b) regarding community-level environmental review, such review must be certified or adopted within five years of the date that the lead agency deems the application for the project to be complete pursuant to Section 65943 of the Government Code.

(2) The project meets both of the following size criteria:

(A) The site of the project is not more than four acres in total area.

(B) The project does not include any single level building that exceeds 100,000 square feet.

(3) The project meets both of the following requirements regarding location:

(A) The project is a residential project on an infill site.

(B) The project is within one-half mile of a major transit stop.

(4) The project meets both of the following requirements regarding number of units:

(A) The project does not contain more than 100 residential units.

(B) The project promotes higher density infill housing. The lead agency may establish its own criteria for determining whether the project promotes higher density infill housing except in either of the following two circumstances:

1. A project with a density of at least 20 units per acre is conclusively presumed to promote higher density infill housing.
2. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.

(5) The project meets the following requirements regarding availability of affordable housing: The project would result in housing units being made available to moderate, low or very low income families as set forth in either A or B below:

(A) The project meets one of the following criteria, and the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units as set forth below at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

1. At least 10 percent of the housing is sold to families of moderate income, or
2. Not less than 10 percent of the housing is rented to families of low income, or
3. Not less than 5 percent of the housing is rented to families of very low income.

(B) If the project does not result in housing units being available as set forth in subdivision (A) above, then the project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(b) A project that otherwise meets the criteria set forth in subdivision (a) is not exempt from CEQA if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project that was not known, and could not have been known at the time that community-level environmental review was certified or adopted.

If a project is not exempt from CEQA due to subdivision (b), the analysis of the environmental effects of the project covered in the EIR or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to subdivisions (b)(2) and (3).

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.24, Public Resources Code.

15196. NOTICE OF EXEMPTION FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS

(a) When a local agency determines that a project is not subject to CEQA under Section 15193, 15194, or 15195, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file the notice required by Section 21152.1 of the Public Resources Code, pursuant to Section 15062.

(b) Failure to file the notice required by this section does not affect the validity of a project.

(c) Nothing in this section affects the time limitations contained in Section 21167.

Note: Authority cited: Section 21083, Public Resources Code. Reference: 21152.1, Public Resources Code.

Article 13. Review and Evaluation of EIRs and Negative Declarations

SECTIONS 15200 TO 15209

15200. PURPOSES OF REVIEW

The purposes of review of EIRs and Negative Declarations include:

(a) Sharing expertise,

(b) Disclosing agency analyses,

(c) Checking for accuracy,

(d) Detecting omissions,

(e) Discovering public concerns, and

(f) Soliciting counter proposals.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21000, 21108, and 21152, Public Resources Code; *Environmental Defense Fund v. Coastside County Water*

District, (1972) 27 Cal. App. 3d 695; *County of Inyo v. City of Los Angeles*, (1977) 71 Cal. App. 3d 185.

15201. PUBLIC PARTICIPATION

Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. Such procedures should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21000, 21082, 21108, and 21152, Public Resources Code; *Environmental Defense Fund v. Coastside County Water District*, (1972) 27 Cal. App. 3d 695; *People v. County of Kern*, (1974) 39 Cal. App. 3d 830; *County of Inyo v. City of Los Angeles*, (1977) 71 Cal. App. 3d 185.

15202. PUBLIC HEARINGS

(a) CEQA does not require formal hearings at any stage of the environmental review process. Public comments may be restricted to written communication.

(b) If an agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing.

(c) A public hearing on the environmental impact of a project should usually be held when the Lead Agency determines it would facilitate the purposes and goals of CEQA to do so. The hearing may be held in conjunction with and as a part of normal planning activities.

(d) A draft EIR or Negative Declaration should be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the Lead Agency or at another location expected to be convenient to the public.

(e) Notice of all public hearings shall be given in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency. To the extent that the public agency maintains an Internet web site, notice of all public hearings should be made available in electronic format on that site.

(f) A public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section. The procedures may adopt existing notice and hearing requirements of the public agency for regularly conducted legislative, planning, and other activities.

(g) There is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21000, 21082, 21108, and 21152, Public Resources Code; *Concerned Citizens of Palm Desert, Inc. v. Board of Supervisors*, (1974) 38 Cal. App. 3d 272.

15203. ADEQUATE TIME FOR REVIEW AND COMMENT

The Lead Agency shall provide adequate time for other public agencies and members of the public to review and comment on a draft EIR or Negative Declaration that it has prepared.

(a) Public agencies may establish time periods for review in their implementing procedures and shall notify the public and reviewing agencies of the time for receipt of comments on EIRs. These time periods shall be consistent with applicable statutes, the State CEQA Guidelines, and applicable Clearinghouse review periods.

(b) A review period for an EIR does not require a halt in other planning or evaluation activities related to a project. Planning should continue in conjunction with environmental evaluation.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21082, 21108 and 21152, Public Resources Code.

15204. FOCUS OF REVIEW

(a) In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.

(b) In reviewing negative declarations, persons and public agencies should focus on the proposed finding that the project will not have a significant effect on the environment. If persons and public agencies believe that the project may have a significant effect, they should:

(1) Identify the specific effect,

(2) Explain why they believe the effect would occur, and

(3) Explain why they believe the effect would be significant.

(c) Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.

(d) Reviewing agencies or organizations should include with their comments the name of a contact person who would be available for later consultation if necessary. Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency's statutory responsibility.

(e) This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.

(f) Prior to the close of the public review period for an EIR or mitigated negative declaration, a responsible or trustee agency which has identified significant effects on the environment may submit to the lead agency proposed mitigation measures which would address those significant effects. Any such measures shall be limited to impacts affecting those resources which are subject to the statutory authority of that agency. If mitigation measures are submitted, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for the mitigation measures, or shall refer the lead agency to appropriate, readily available guidelines or reference documents which meet the same purpose.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080, 21081.6, and 21080.4, 21104 and 21153, Public Resources Code, Formerly Section 15161; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; and *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

15205. REVIEW BY STATE AGENCIES

(a) Draft EIRs and negative declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814. For U.S. Mail, submit to P.O. Box 3044, Sacramento, California 95812-3044. When submitting such documents to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic form on a diskette or by electronic mail transmission, if available.

(b) The following environmental documents shall be submitted to the State Clearinghouse for review by state agencies:

(1) Draft EIRs and Negative Declarations prepared by a state agency where such agency is a Lead Agency.

(2) Draft EIRs and Negative Declarations prepared by a public agency where a state agency is a Responsible Agency, Trustee Agency, or otherwise has jurisdiction by law with respect to the project.

(3) Draft EIRs and Negative Declarations on projects identified in Section 15206 as being of statewide, regional, or areawide significance.

(4) Draft EISs, environmental assessments, and findings of no significant impact prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1).

(c) Public agencies may send environmental documents to the State Clearinghouse for review where a state agency has special expertise with regard to the environmental impacts involved. The areas of statutory authorities of state agencies are identified in Appendix B. Any such environmental documents submitted to the State Clearinghouse shall include, in addition to the printed copy, a copy of the document in electronic format, on a diskette or by electronic mail transmission, if available.

(d) When an EIR or Negative Declaration is submitted to the State Clearinghouse for review, the review period set by the Lead Agency shall be at least as long as the period provided in the state review system operated by the State Clearinghouse. In the state review system, the normal review period is 45 days for EIRs and 30 days for Negative Declarations. In exceptional circumstances, the State Clearinghouse may set shorter review periods when requested by the Lead Agency.

(e) A sufficient number of copies of an EIR, negative declaration, or mitigated negative declaration, shall be submitted to the State Clearinghouse for review and comment by state agencies. The notice of completion form required by the State Clearinghouse must be submitted together with the copies of the EIR and may be submitted together with the copies of the negative declaration or mitigated negative declaration. The notice of completion form required by the State Clearinghouse is included in Appendix C. If the lead agency uses the on-line process for submittal of the notice of completion form to the State Clearinghouse, the form generated from the Internet shall satisfy this requirement (refer to www.ceqanet.ca.gov.).

(f) While the Lead Agency is encouraged to contact the regional and district offices of state Responsible Agencies, the Lead Agency must, in all cases, submit documents to the State Clearinghouse for distribution in order to comply with the review requirements of this section.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083, 21091, 21104, and 21153, Public Resources Code.

15206. PROJECTS OF STATEWIDE, REGIONAL, OR AREAWIDE SIGNIFICANCE

(a) Projects meeting the criteria in this section shall be deemed to be of statewide, regional, or areawide significance.

(1) A draft EIR or negative declaration prepared by any public agency on a project described in this section shall be submitted to the State Clearinghouse and should be submitted also to the appropriate metropolitan area council of governments for review and comment. The notice of completion form required by the State Clearinghouse must be submitted together with the copies of the EIR and may be submitted together with the copies of the negative declaration. The notice of completion form required by the State Clearinghouse is included in Appendix C. If the lead agency uses the on-line process for submittal of the notice of completion form to the State Clearinghouse, the form generated from the Internet shall satisfy this requirement (refer to www.ceqanet.ca.gov).

(2) When such documents are submitted to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic format on a diskette or by electronic mail transmission, if available.

(b) The Lead Agency shall determine that a proposed project is of statewide, regional, or areawide significance if the project meets any of the following criteria:

(1) A proposed local general plan, element, or amendment thereof for which an EIR was prepared. If a Negative Declaration was prepared for the plan, element, or amendment, the document need not be submitted for review.

(2) A project has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located. Examples of the effects include generating significant amounts of traffic or interfering with the attainment or maintenance of state or national air quality standards. Projects subject to this subdivision include:

(A) A proposed residential development of more than 500 dwelling units.

(B) A proposed shopping center or business establishment employing more than 1,000 persons or encompassing more than 500,000 square feet of floor space.

(C) A proposed commercial office building employing more than 1,000 persons or encompassing more than 250,000 square feet of floor space.

(D) A proposed hotel/motel development of more than 500 rooms.

(E) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or encompassing more than 650,000 square feet of floor area.

(3) A project which would result in the cancellation of an open space contract made pursuant to the California Land Conservation Act of 1965 (Williamson Act) for any parcel of 100 or more acres.

(4) A project for which an EIR and not a Negative Declaration was prepared which would be located in and would substantially impact the following areas of critical environmental sensitivity:

(A) The Lake Tahoe Basin.

(B) The Santa Monica Mountains Zone as defined by Section 33105 of the Public Resources Code.

(C) The California Coastal Zone as defined in, and mapped pursuant to, Section 30103 of the Public Resources Code.

(D) An area within 1/4 mile of a wild and scenic river as defined by Section 5093.5 of the Public Resources Code.

(E) The Sacramento-San Joaquin Delta, as defined in Water Code Section 12220.

(F) The Suisun Marsh as defined in Public Resources Code Section 29101.

(G) The jurisdiction of the San Francisco Bay Conservation and Development Commission as defined in Government Code Section 66610.

(5) A project which would substantially affect sensitive wildlife habitats including but not limited to riparian lands, wetlands, bays, estuaries, marshes, and habitats for endangered, rare and threatened species as defined by Section 15380 of this Chapter.

(6) A project which would interfere with attainment of regional water quality standards as stated in the approved areawide waste treatment management plan.

(7) A project which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083, Public Resources Code.

15207. FAILURE TO COMMENT

If any public agency or person who is consulted with regard to an EIR or Negative Declaration fails to comment within a reasonable time as specified by the Lead Agency, it shall be assumed, without a request for a specific extension of time, that such agency or person has no comment to make. Although the Lead Agency need not respond to late comments, the Lead Agency may choose to respond to them.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21104 and 21153, Public Resources Code; *Cleary v. County of Stanislaus*, (1981) 118 Cal. App. 3d 348.

15208. RETENTION AND AVAILABILITY OF COMMENTS

Comments received through the consultation process shall be retained for a reasonable period and available for public inspection at an address given in the final EIR. Comments which may be received on a draft EIR or Negative Declaration under preparation shall also be considered and kept on file.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21104, 21082.1 and 21153, Public Resources Code; Section 4, Chapter 480, Statutes of 1981; *People v. County of Kern*, (1974) 39 Cal. App. 3d 830. Formerly Section 15166.

15209. COMMENTS ON INITIATIVE OF PUBLIC AGENCIES

Every public agency may comment on environmental documents dealing with projects which affect resources with which the agency has special expertise regardless of whether its comments were solicited or whether the effects fall within the legal jurisdiction of the agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002, 21104, and 21153, Public Resources Code.

Article 14. Projects Also Subject to the National Environmental Policy Act (NEPA)

SECTIONS 15220 TO 15229

15220. GENERAL

This article applies to projects that are subject to both CEQA and NEPA. NEPA applies to projects which are carried out, financed, or approved in whole or in part by federal agencies. Accordingly, this article applies to projects which involve one or more state or local agencies and one or more federal agencies.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21083.5, 21083.6, and 21083.7, Public Resources Code; National Environmental Policy Act of 1969, Public Law 91–190 as amended, 42 U.S.C.A. 4321–4347; NEPA Regulations, 40 Code of Federal Regulations (C.F.R.) Parts 1500–1508.

15221. NEPA DOCUMENT READY BEFORE CEQA DOCUMENT

(a) When a project will require compliance with both CEQA and NEPA, state or local agencies should use the EIS or Finding of No Significant Impact rather than preparing an EIR or Negative Declaration if the following two conditions occur:

(1) An EIS or Finding of No Significant Impact will be prepared before an EIR or Negative Declaration would otherwise be completed for the project; and

(2) The EIS or Finding of No Significant Impact complies with the provisions of these Guidelines.

(b) Because NEPA does not require separate discussion of mitigation measures or growth inducing impacts, these points of analysis will need to be added, supplemented, or identified before the EIS can be used as an EIR.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(C) of NEPA, 43 U.S.C.A. 4322(2)(C).

15222. PREPARATION OF JOINT DOCUMENTS

If a Lead Agency finds that an EIS or Finding of No Significant Impact for a project would not be prepared by the federal agency by the time when the Lead Agency will need to consider an EIR or Negative Declaration, the Lead Agency should try to prepare a combined EIR-EIS or Negative Declaration-Finding of No Significant Impact. To avoid the need for the federal agency to prepare a separate document for the same project, the Lead Agency must involve the federal agency in the preparation of the joint document.

This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(D) of NEPA, 43 U.S.C.A. 4322(2)(D); 40 C.F.R. Part 1506.2.

15223. CONSULTATION WITH FEDERAL AGENCIES

When it plans to use an EIS or Finding of No Significant Impact or to prepare such a document jointly with a federal agency, the Lead Agency shall consult as soon as possible with the federal agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21083.5 and 21083.7, Public Resources Code.

15224. TIME LIMITS

Where a project will be subject to both CEQA and the National Environmental Policy Act, the one year time limit and the 105-day time limit may be waived pursuant to Section 15110.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21083.6, Public Resources Code.

15225. CIRCULATION OF DOCUMENTS

(a) Where the federal agency circulated the EIS or Finding of No Significant Impact for public review as broadly as state or local law may require and gave notice meeting the standards in

Section 15072(a) or 15087(a), the Lead Agency under CEQA may use the federal document in the place of an EIR or Negative Declaration without recirculating the federal document for public review. One review and comment period is enough. Prior to using the federal document in this situation, the Lead Agency shall give notice that it will use the federal document in the place of an EIR or Negative Declaration and that it believes that the federal document meets the requirements of CEQA. The notice shall be given in the same manner as a notice of the public availability of a draft EIR under Section 15087.

(b) If an EIS has been prepared and filed pursuant to NEPA on the closure and reuse of a military base and the Lead Agency decides that the EIS does not fully meet the requirements of CEQA or has not been circulated for public review as state and local law may require, the Lead Agency responsible for preparation of an EIR for a reuse plan for the same base may proceed in the following manner:

(1) Prepare and circulate a notice of preparation pursuant to Section 15082. The notice shall include a description of the reuse plan, a copy of the EIS, an address to which to send comments, and the deadline for submitting comments. The notice shall state that the lead agency intends to utilize the EIS as a draft EIR and requests comments on whether the EIS provides adequate information to serve as a draft EIR and what specific additional information, if any, is necessary.

(2) Upon the close of the comment period, the lead agency may proceed with preparation and circulation for comment of the draft EIR for the reuse plan. To the greatest extent feasible, the lead agency shall avoid duplication and utilize the EIS or information in the EIS as all or part of the draft EIR. The EIR shall be completed in compliance with the provisions of CEQA.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21083.5 and 21092, Public Resources Code.

15226. JOINT ACTIVITIES

State and local agencies should cooperate with federal agencies to the fullest extent possible to reduce duplication between the California Environmental Quality Act and the National Environmental Policy Act. Such cooperation should, to the fullest extent possible, include:

(a) Joint planning processes,

(b) Joint environmental research and studies,

(c) Joint public hearings,

(d) Joint environmental documents.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21083.5 and 21083.7, Public Resources Code; 40 C.F.R. Part 1506.2. Formerly Section 15063(h).

15227. STATE COMMENTS ON A FEDERAL PROJECT

When a state agency officially comments on a proposed federal project which may have a significant effect on the environment, the comments shall include or reference a discussion of the material specified in Section 15126. An EIS on the federal project may be referenced to meet the requirements of this section.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21101, Public Resources Code.

15228. WHERE FEDERAL AGENCY WILL NOT COOPERATE

Where a federal agency will not cooperate in the preparation of joint document and will require separate NEPA compliance for the project at a later time, the state or local agency should persist in efforts to cooperate with the federal agency. Because NEPA expressly allows federal agencies to

use environmental documents prepared by an agency of statewide jurisdiction, a local agency should try to involve a state agency in helping prepare an EIR or Negative Declaration for the project. In this way there will be a greater chance that the federal agency may later use the CEQA document and not require the applicant to pay for preparation of a second document to meet NEPA requirements at a later time.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21083.5, Public Resources Code; Section 102(2)(D) of NEPA, 42 U.S.C.A. 4322(2)(D).

15229. BASELINE ANALYSIS FOR MILITARY BASE REUSE PLAN EIRS

When preparing and certifying an EIR for a plan for the reuse of a military base, including when utilizing an Environmental Impact Statement pursuant to Section 21083.5 of the Public Resources Code, the determination of whether the reuse plan may have a significant effect on the environment may, at the discretion of the lead agency, be based upon the physical conditions which were present at the time that the federal decision for the closure or realignment of the base or reservation became final. These conditions shall be referred to as the "baseline physical conditions." Impacts which do not exceed the baseline physical conditions shall not be considered significant.

(a) Prior to circulating a draft EIR pursuant to the provisions of this Section, the lead agency shall do all of the following, in order:

(1) Prepare proposed baseline physical conditions, identify pertinent responsible and trustee agencies and consult with those agencies prior to the public hearing required by subdivision (a)(2) as to the application of their regulatory authority and permitting standards to the proposed baseline physical conditions, the proposed reuse plan, and specific, planned future nonmilitary land uses of the base or reservation. The affected agencies shall have not less than 30 days prior to the public hearing to review the proposed baseline physical conditions and the proposed reuse plan and to submit their comments to the lead agency.

(2) Hold a public hearing at which is discussed the federal EIS prepared for, or being prepared for, the closure or realignment of the military base or reservation. The discussion shall include the significant effects on the environment, if any, examined in the EIS, potential methods of mitigating those effects, including feasible alternatives, and the mitigative effects of federal, state, and local laws applicable to future nonmilitary activities. Prior to the close of the hearing, the lead agency shall specify whether it will adopt any of the baseline physical conditions for the reuse plan EIR and identify those conditions. The lead agency shall specify particular baseline physical conditions, if any, which it will examine in greater detail than they were examined in the EIS. Notice of the hearing shall be given pursuant to Section 15087. The hearing may be continued from time to time.

(3) Prior to the close of the hearing, the lead agency shall do all of the following:

(A) Specify the baseline physical conditions which it intends to adopt for the reuse plan EIR, and specify particular physical conditions, if any, which it will examine in greater detail than were examined in the EIS.

(B) State specifically how it intends to integrate its discussion of the baseline physical conditions in the EIR with the reuse planning process, taking into account the adopted environmental standards of the community, including but not limited to, the adopted general plan, specific plan or redevelopment plan, and including other applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, air quality management plans, integrated waste management plans, and county hazardous waste management plans.

(C) State the specific economic or social reasons, including but not limited to, new job creation, opportunities for employment of skilled workers, availability of low and

moderate-income housing, and economic continuity which support selection of the baseline physical conditions.

(b) An EIR prepared under this section should identify any adopted baseline physical conditions in the environmental setting section. The baseline physical conditions should be cited in discussions of effects. The no-project alternative analyzed in an EIR prepared under this section shall discuss the conditions on the base as they exist at the time of preparation, as well as what could be reasonably expected to occur in the foreseeable future if the reuse plan were not approved, based on current plans and consistent with available infrastructure and services.

(c) All public and private activities taken pursuant to or in furtherance of a reuse plan for which an EIR was prepared and certified pursuant to this section shall be deemed to be a single project. A subsequent or supplemental EIR shall be required only if the lead agency determines that any of the circumstances described in Section 15162 or 15163 exist.

(d) Limitations:

(1) Nothing in this section shall in any way limit the scope of review or determination of significance of the presence of hazardous or toxic wastes, substances, and materials, including but not limited to, contaminated soils and groundwater. The regulation of hazardous or toxic wastes, substances, and materials shall not be constrained by this section.

(2) This section does not apply to hazardous waste regulation and remediation projects undertaken pursuant to Chapter 6.5 (commencing with Section 25100) or Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code or pursuant to the Porter-Cologne Water Quality Control Act (Water Code Section 13000, et seq.)

(3) All subsequent development at the military base or reservation shall be subject to all applicable federal, state, or local laws, including but not limited to, those relating to air quality, water quality, traffic, threatened and endangered species, noise, and hazardous or toxic wastes, substances, or materials.

(e) "Reuse plan" means the initial plan for the reuse of military base adopted by a local government, including a redevelopment agency or joint powers authority, in the form of a general plan, general plan amendment, specific plan, redevelopment plan, or other planning document. For purposes of this section, a reuse plan also shall include a statement of development policies, a diagram or diagrams illustrating its provisions, including a designation of the proposed general distribution, location, and development intensity for housing, business, industry, open space, recreation, natural resources, public buildings and grounds, roads, and other transportation facilities, infrastructure, and other categories of proposed uses, whether public or private.

(f) This section may be applied to any reuse plan EIR for which a notice of preparation is issued within one year from the date that the federal record of decision was rendered for the military base or reservation closure or realignment and reuse, or prior to January 1, 1997, whichever is later, but only if the EIR is completed and certified within five years from the date that the federal record of decision was rendered.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21083.1, Public Resources Code.

Article 15. Litigation

SECTIONS 15230 TO 15233

15230. TIME LIMITS AND CRITERIA

Litigation under CEQA must be handled under the time limits and criteria described in Sections 21167 et seq. of the Public Resources Code and Section 15112 of these Guidelines in addition to provisions in this article.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21167 et seq., Public Resources Code.

15231. ADEQUACY OF EIR OR NEGATIVE DECLARATION FOR USE BY RESPONSIBLE AGENCIES

A final EIR prepared by a Lead Agency or a Negative Declaration adopted by a Lead Agency shall be conclusively presumed to comply with CEQA for purposes of use by Responsible Agencies which were consulted pursuant to sections 15072 or 15082 unless one of the following conditions occurs:

(a) The EIR or Negative Declaration is finally adjudged in a legal proceeding not to comply with the requirements of CEQA, or

(b) A subsequent EIR is made necessary by Section 15162 of these Guidelines.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080.1, 21166, 21167.2, and 21167.3, Public Resources Code.

15232. REQUEST FOR HEARING

In a writ of mandate proceeding challenging approval of a project under CEQA, the petitioner shall, within 90 days of filing the petition, request a hearing or otherwise be subject to dismissal on the court's own motion or on the motion of any party to the suit.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21167.4, Public Resources Code.

15233. CONDITIONAL PERMITS

If a lawsuit is filed challenging an EIR or Negative Declaration for noncompliance with CEQA, Responsible Agencies shall act as if the EIR or Negative Declaration complies with CEQA and continue to process the application for the project according to the time limits for Responsible Agency action contained in Government Code Section 65952.

(a) If an injunction or a stay has been granted in the lawsuit prohibiting the project from being carried out, the Responsible Agency shall have authority only to disapprove the project or to grant a conditional approval of the project. A conditional approval shall constitute permission to proceed with a project only when the court action results in a final determination that the EIR or Negative Declaration does comply with the provisions of CEQA (Public Resources Code Section 21167.3(a)).

(b) If no injunction or stay is granted in the lawsuit, the Responsible Agency shall assume that the EIR or Negative Declaration fully meets the requirements of CEQA. The Responsible Agency shall approve or disapprove the project within the time limits described in Article 8, commencing with Section 15100, of these Guidelines and described in Government Code Section 65952. An approval granted by a Responsible Agency in this situation provides only permission to proceed with the project at the applicant's risk prior to a final decision in the lawsuit (Public Resources Code Section 21167.3(b)).

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21167.3, Public Resources Code; *Kriebel v. City Council* (1980) 112 Cal. App. 3d 693.

Article 16. EIR Monitor

SECTION 15240

15240. EIR MONITOR

The Secretary for Resources may provide for publication of a bulletin entitled "California EIR Monitor" on a subscription basis to provide public notice of amendments to the Guidelines, the completion of draft EIRs, and other matters as deemed appropriate. Inquiries and subscription requests should be sent to the following address:

Secretary for Resources Attention: California EIR Monitor 1416 Ninth Street, Room 1311 Sacramento, California 95814

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21088, Public Resources Code.

Article 17. Exemption for Certified State Regulatory Programs

SECTIONS 15250 TO 15253

15250. GENERAL

Section 21080.5 of the Public Resources Code provides that a regulatory program of a state agency shall be certified by the Secretary for Resources as being exempt from the requirements for preparing EIRs, Negative Declarations, and Initial Studies if the Secretary finds that the program meets the criteria contained in that code section. A certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible. This article provides information concerning certified programs.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080.5, Public Resources Code.

15251. LIST OF CERTIFIED PROGRAMS

The following programs of state regulatory agencies have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5:

(a) The regulation of timber harvesting operations by the California Department of Forestry and the State Board of Forestry pursuant to Chapter 8, commencing with Section 4511 of Part 2 of Division 4 of the Public Resources Code.

(b) The regulatory program of the Fish and Game Commission pursuant to the Fish and Game Code.

(c) The regulatory program of the California Coastal Commission and the regional coastal commissions dealing with the consideration and granting of coastal development permits under the California Coastal Act of 1976, Division 20 (commencing with Section 30000) of the Public Resources Code.

(d) That portion of the regulatory program of the Air Resources Board which involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans to be used in the regulatory program for the protection and enhancement of ambient air quality in California.

(e) The regulatory program of the State Board of Forestry in adopting, amending, or repealing standards, rules, regulations, or plans under the Z'berg-Nejedly Forest Practice Act, Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code.

(f) The program of the California Coastal Commission involving the preparation, approval, and certification of local coastal programs as provided in Sections 30500 through 30522 of the Public Resources Code.

(g) The Water Quality Control (Basin)/208 Planning Program of the State Water Resources Control Board and the Regional Water Quality Control Boards.

(h) The permit and planning programs of the San Francisco Bay Conservation and Development Commission under the McAteer-Petris Act, Title 7.2 (commencing with Section 66600) of the Government Code; and the planning program of the San Francisco Bay Conservation and Development Commission under Suisun Marsh Preservation Act, Division 19 (commencing with Section 29000) of the Public Resources Code.

(i) The pesticide regulatory program administered by the Department of Pesticide Regulation and the county agricultural commissioners insofar as the program consists of:

(1) The registration, evaluation, and classification of pesticides.

(2) The adoption, amendment, or repeal of regulations and standards for the licensing and regulation of pesticide dealers and pest control operators and advisors.

(3) The adoption, amendment, or repeal of regulations for standards dealing with the monitoring of pesticides and of the human health and environmental effects of pesticides.

(4) The regulation of the use of pesticides in agricultural and urban areas of the state through the permit system administered by the county agricultural commissioners.

(j) The power plant site certification program of the State Energy Resources Conservation and Development Commission under Chapter 6 of the Warren-Alquist Act, commencing with Public Resources Code Section 25500.

(k) The regulatory program of the State Water Resources Control Board to establish instream beneficial use protection programs.

(l) That portion of the regulatory program of the South Coast Air Quality Management District which involves the adoption, amendment, and repeal of regulations pursuant to the provisions of the Health and Safety Code.

(m) The Program of the Delta Protection Commission involving the preparation and adoption of a Resources Management Plan for the Sacramento-San Joaquin Delta (Pub. Resources Code §29760 ff.), and the Commission's review and action on general plan amendments proposed by local governments to make their plans consistent with the provisions of the Commission's Resource Management Plan (Pub. Resources Code §29763.5).

(n) The program of the Department of Fish and Game for the adoption of regulations under the Fish and Game Code.

(o) The program of the Department of Fish and Game implementing the incidental take permit application process under the California Endangered Species Act ("CESA"), Fish and Game Code sections 2080 and 2081, and specifically the regulation governing the Department of Fish and Game's role as a "lead agency" when issuing incidental take permits, found at California Code of Regulations, Title 14, section 783.5(d).

(p) The regulatory program of the Department of Fish and Game for review and approval of voluntary local programs for routine and ongoing agricultural activities, as authorized by the California Endangered Species Act, Fish and Game Code section 2086.

Note: Authority cited: Sections 21083 and 21080.5, Public Resources Code; Reference: Section 21080.5, Public Resources Code.

15252. SUBSTITUTE DOCUMENT

(a) The document used as a substitute for an EIR or Negative Declaration in a certified program shall include at least the following items:

(1) A description of the proposed activity, and

(2) Either:

(A) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or

(B) A statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.

(b) The notice of the decision on the proposed activity shall be filed with the Secretary for Resources.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080.5, Public Resources Code.

15253. USE OF AN EIR SUBSTITUTE BY A RESPONSIBLE AGENCY

(a) An environmental analysis document prepared for a project under a certified program listed in Section 15251 shall be used by another agency granting an approval for the same project where the conditions in subdivision (b) have been met. In this situation, the certified agency shall act as Lead Agency, and the other permitting agencies shall act as Responsible Agencies using the certified agency's document.

(b) The conditions under which a public agency shall act as a Responsible Agency when approving a project using an environmental analysis document prepared under a certified program in the place of an EIR or Negative Declaration are as follows:

(1) The certified agency is the first agency to grant a discretionary approval for the project.

(2) The certified agency consults with the Responsible Agencies, but the consultation need not include the exchange of written notices.

(3) The environmental analysis document identifies:

(A) The significant environmental effects within the jurisdiction or special expertise of the Responsible Agency.

(B) Alternatives or mitigation measures that could avoid or reduce the severity of the significant environmental effects.

(4) Where written notices were not exchanged in the consultation process, the Responsible Agency was afforded the opportunity to participate in the review of the property by the certified agency in a regular manner designed to inform the certified agency of the concerns of the Responsible Agency before release of the EIR substitute for public review.

(5) The certified agency established a consultation period between the certified agency and the Responsible Agency that was at least as long as the period allowed for public review of the EIR substitute document.

(6) The certified agency exercised the powers of a Lead Agency by considering all the significant environmental effects of the project and making a finding under Section 15091 for each significant effect.

(c) Certified agencies are not required to adjust their activities to meet the criteria in subdivision (b). Where a certified agency does not meet the criteria in subdivision (b):

(1) The substitute document prepared by the agency shall not be used by other permitting agencies in the place of an EIR or Negative Declaration, and

(2) Any other agencies granting approvals for the project shall comply with CEQA in the normal manner. A permitting agency shall act as a Lead Agency and prepare an EIR or a Negative Declaration. Other permitting agencies, if any, shall act as Responsible Agencies and use the EIR or Negative Declaration prepared by the Lead Agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002.1(d), 21080.5, and 21165, Public Resources Code.

Article 18. Statutory Exemptions

SECTIONS 15260 TO 15285

15260. GENERAL

This article describes the exemptions from CEQA granted by the Legislature. The exemptions take several forms. Some exemptions are complete exemptions from CEQA. Other exemptions apply to only part of the requirements of CEQA, and still other exemptions apply only to the timing of CEQA compliance.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(b), Public Resources Code.

15261. ONGOING PROJECT

(a) If a project being carried out by a public agency was approved prior to November 23, 1970, the project shall be exempt from CEQA unless either of the following conditions exist:

(1) A substantial portion of public funds allocated for the project have not been spent, and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that a project subject to the National Environmental Policy Act (NEPA) shall be exempt from CEQA as an on-going project if, under regulations promulgated under NEPA, the project would be too far advanced as of January 1, 1970, to require preparation of an EIS.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A private project shall be exempt from CEQA if the project received approval of a lease, license, certificate, permit, or other entitlement for use from a public agency prior to April 5, 1973, subject to the following provisions:

(1) CEQA does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report under authority other than CEQA. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where a project was approved prior to December 5, 1972, and prior to that date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a private project has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall be subject to CEQA only if the approval or

approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21169, 21170, and 21171, Public Resources Code; *County of Inyo v. Yorty*, 32 Cal. App. 3d 795.

15262. FEASIBILITY AND PLANNING STUDIES

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21102 and 21150, Public Resources Code.

15263. DISCHARGE REQUIREMENTS

The State Water Resources Control Board and the regional boards are exempt from the requirement to prepare an EIR or a Negative Declaration prior to the adoption of waste discharge requirements, except requirements for new sources as defined in the Federal Water Pollution Control Act or in other acts which amend or supplement the Federal Water Pollution Control Act. The term "waste discharge requirements" as used in this section is the equivalent of the term "permits" as used in the Federal Water Pollution Control Act.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 13389, Water Code.

15264. TIMBERLAND PRESERVES

Local agencies are exempt from the requirement to prepare an EIR or Negative Declaration on the adoption of timberland preserve zones under Government Code Sections 51100 et seq. (Gov. Code, Sec. 51119).

Note: Authority cited: Section 21083, Public Resources Code; Reference: Government Code Section 51119, Government Code.

15265. ADOPTION OF COASTAL PLANS AND PROGRAMS

(a) CEQA does not apply to activities and approvals pursuant to the California Coastal Act (commencing with Section 30000 of the Public Resources Code) by:

  (1) Any local government, as defined in Section 30109 of the Public Resources Code, necessary for the preparation and adoption of a local coastal program, or

  (2) Any state university or college, as defined in Section 30119, as necessary for the preparation and adoption of a long-range land use development plan.

(b) CEQA shall apply to the certification of a local coastal program or long-range land use development plan by the California Coastal Commission.

(c) This section shifts the burden of CEQA compliance from the local agency or the state university or college to the California Coastal Commission. The Coastal Commission's program of certifying local coastal programs and long-range land use development plans has been certified under Section 21080.5, Public Resources Code. See: Section 15192.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080.9, Public Resources Code.

15266. GENERAL PLAN TIME EXTENSION

CEQA shall not apply to the granting of an extension of time by the Office of Planning and Research to a city or county for the preparation and adoption of one or more elements of a city or county general plan.

Note: Authority cited: Section 21083, Public Resources CodeCode; Reference: Section 21080.10(a), Public Resources Code.

15267. FINANCIAL ASSISTANCE TO LOW OR MODERATE INCOME HOUSING

CEQA does not apply to actions taken by the Department of and Community Development to provide financial assistance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. The residential project which is the subject of the application for financial assistance will be subject to CEQA when approvals are granted by another agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080.10(b), Public Resources Code.

15268. MINISTERIAL PROJECTS

(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis.

(b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial:

  (1) Issuance of building permits.

  (2) Issuance of business licenses.

  (3) Approval of final subdivision maps.

  (4) Approval of individual utility service connections and disconnections.

(c) Each public agency should, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(b)(1), Public Resources Code; *Day v. City of Glendale*, 51 Cal. App. 3d 817.

15269. EMERGENCY PROJECTS

The following emergency projects are exempt from the requirements of CEQA.

(a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028(b) of Public Resources Code.

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare.

(c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.

(d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This exemption does not apply to highways designated as official state scenic highways, nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(e) Seismic work on highways and bridges pursuant to Section 180.2 of the Streets and Highways Code, Section 180 et seq.

Note: Authority: Section 21083, Public Resources Code; Reference: Sections 21080(b)(2), (3), and (4), 21080.33 and 21172, Public Resources Code; *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257; and *Western Municipal Water District of Riverside County v. Superior Court of San Bernardino County* (1987) 187 Cal.App.3d 1104.

15270. PROJECTS WHICH ARE DISAPPROVED

(a) CEQA does not apply to projects which a public agency rejects or disapproves.

(b) This section is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation of the CEQA process where the agency can determine that the project cannot be approved.

(c) This section shall not relieve an applicant from paying the costs for an EIR or Negative Declaration prepared for his project prior to the Lead Agency's disapproval of the project after normal evaluation and processing.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(b)(5), Public Resources Code.

15271. EARLY ACTIVITIES RELATED TO THERMAL POWER PLANTS

(a) CEQA does not apply to actions undertaken by a public agency relating to any thermal power plant site or facility including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for such a thermal power plant, if the thermal power plant site and related facility will be the subject of an EIR or Negative Declaration or other document or documents prepared pursuant to a regulatory program certified pursuant to Public Resources Code Section 21080.5, which will be prepared by:

(1) The State Energy Resources Conservation and Development Commission,

(2) The Public Utilities Commission, or

(3) The city or county in which the power plant and related facility would be located.

(b) The EIR, Negative Declaration, or other document prepared for the thermal power plant site or facility, shall include the environmental impact, if any, of the early activities described in this section.

(c) This section acts to delay the timing of CEQA compliance from the early activities of a utility to the time when a regulatory agency is requested to approve the thermal power plant and shifts the responsibility for preparing the document to the regulatory agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 15080(b)(6), Public Resources Code.

15272. OLYMPIC GAMES

CEQA does not apply to activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, Olympic Games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic Games. If the facilities are required by the International Olympic Committee as a condition of being awarded the Olympic Games, the Lead Agency need not discuss the "no project" alternative in an EIR with respect to those facilities.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(b)(7), Public Resources Code.

15273. RATES, TOLLS, FARES, AND CHARGES

(a) CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of:

  (1) Meeting operating expenses, including employee wage rates and fringe benefits,

  (2) Purchasing or leasing supplies, equipment, or materials,

  (3) Meeting financial reserve needs and requirements,

  (4) Obtaining funds for capital projects, necessary to maintain service within existing service areas, or

  (5) Obtaining funds necessary to maintain such intra-city transfers as are authorized by city charter.

(b) Rate increases to fund capital projects for the expansion of a system remain subject to CEQA. The agency granting the rate increase shall act either as the Lead Agency if no other agency has prepared environmental documents for the capital project or as a Responsible Agency if another agency has already complied with CEQA as the Lead Agency.

(c) The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this section is claimed setting forth with specificity the basis for the claim of exemption.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(b)(8), Public Resources Code.

15274. FAMILY DAY CARE HOMES

(a) CEQA does not apply to establishment or operation of a large family day care home, which provides in-home care for up to fourteen children, as defined in Section 1596.78 of the Health and Safety Code.

(b) Under the Health and Safety Code, local agencies cannot require use permits for the establishment or operation of a small family day care home, which provides in-home care for up to eight children, and the establishment or operation of a small family day care home is a ministerial action which is not subject to CEQA.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21083, Public Resources Code.

15275. SPECIFIED MASS TRANSIT PROJECTS

CEQA does not apply to the following mass transit projects:

(a) The institution or increase of passenger or commuter service on rail lines or high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities;

(b) Facility extensions not to exceed four miles in length which are required for transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(b)(11), (12), and (13), Public Resources Code.

15276. TRANSPORTATION IMPROVEMENT AND CONGESTION MANAGEMENT PROGRAMS

(a) CEQA does not apply to the development or adoption of a regional transportation improvement program or the state transportation improvement program. Individual projects developed pursuant to these programs shall remain subject to CEQA.

(b) CEQA does not apply to preparation and adoption of a congestion management program by a county congestion management agency pursuant to Government Code Section 65089, et seq.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(b)(13), Public Resources Code.

15277. PROJECTS LOCATED OUTSIDE CALIFORNIA

CEQA does not apply to any project or portion thereof located outside of California which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 or pursuant to a law of that state requiring preparation of a document containing essentially the same points of analysis as in an Environmental Impact Statement prepared under the National Environmental Policy Act of 1969. Any emissions or discharges that would have a significant effect on the environment in the State of California are subject to CEQA where a California public agency has authority over the emissions or discharges.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(b)(15), Public Resources Code; 58 Opinions of the California Attorney General 614 (S.O. 75/50).

15278. APPLICATION OF COATINGS

(a) CEQA does not apply to a discretionary decision by an air quality management district for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant if the district finds all of the following:

  (1) The project will not cause a net increase in any emissions of any pollutant for which a national or state ambient air quality standard has been established after the internal emission accounting for previous emission reductions achieved at the facility and recognized by the district.

  (2) The project will not cause a net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment. The term "net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment" shall be determined in accordance with the rules and regulations of the district.

  (3) The project will not cause any other adverse effect on the environment.

(b) The district shall provide a 10-day notice, at the time of the issuance of the permit, of any such exemption. Notice shall be published in two newspapers of general circulation in the area of the project and shall be mailed to any person who makes a written request for such a notice. The notice shall state that the complete file on the project and the basis for the district's findings of exemption are available for inspection and copying at the office of the district.

(c) Any person may appeal the issuance of a permit based on an exemption under subdivision (a) to the hearing board as provided in Section 42302.1 of the Health and Safety Code. The permit shall be revoked by the hearing board if there is substantial evidence in light of the whole

record before the board that the project may not satisfy one or more of the criteria established pursuant to subdivision (a). If there is no such substantial evidence, the exemption shall be upheld. Any appeal under this subdivision shall be scheduled for hearing on the calendar of the hearing board within 10 working days of the appeal being filed. The hearing board shall give the appeal priority on its calendar and shall render a decision on the appeal within 21 working days of the appeal being filed. The hearing board may delegate the authority to hear and decide such an appeal to a subcommittee of its body.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Chapter 1131, Statutes of 1993, Section 1.

15279. [DELETED]

15280. [DELETED]

15281. AIR QUALITY PERMITS

CEQA does not apply to the issuance, modification, amendment, or renewal of any permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section 39053.3 of the Health and Safety Code, or pursuant to an air district Title V program established under Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or facility.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080.24, Public Resources Code.

15282. OTHER STATUTORY EXEMPTIONS

The following is a list of existing statutory exemptions. Each subdivision summarizes statutory exemptions found in the California Code. Lead agencies are not to rely on the language contained in the summaries below but must rely on the actual statutory language that creates the exemption. This list is intended to assist lead agencies in finding them, but not as a substitute for them. This section is merely a reference tool.

(a) The notification of discovery of Native American burial sites as set forth in Section 5097.98(c) of the Public Resources Code.

(b) Specified prison facilities as set forth in Sections 21080.01, 21080.02, 21080.03 and 21080.07 of the Public Resources Code.

(c) The lease or purchase of the rail right-of-way used for the San Francisco Peninsula commute service between San Francisco and San Jose as set forth in Section 21080.05 of the Public Resources Code.

(d) Any activity or approval necessary for or incidental to project funding or authorization for the expenditure of funds for the project, by the Rural Economic Development Infrastructure Panel as set forth in Section 21080.08 of the Public Resources Code.

(e) The conversion of an existing rental mobilehome park to a resident initiated subdivision, cooperative, or condominium for mobilehomes as set forth in Section 21080.8 of the Public Resources Code.

(f) Settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements as set forth in Section 21080.11 of the Public Resources Code.

(g) Any railroad grade separation project which eliminates an existing grade crossing or which reconstructs an existing grade separation as set forth in Section 21080.13 of the Public Resources Code.

(h) The adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.

(i) The closing of any public school or the transfer of students from that public school to another school in which kindergarten or any grades 1 through 12 is maintained as set forth in 21080.18 of the Public Resources Code.

(j) A project for restriping streets or highways to relieve traffic congestion as set forth in Section 21080.19 of the Public Resources Code.

(k) The installation of new pipeline or maintenance, repair, restoration, removal, or demolition of an existing pipeline as set forth in Section 21080.21 of the Public Resources Code, as long as the project does not exceed one mile in length.

(l) The activities and approvals by a local government necessary for the preparation of general plan amendments pursuant to Public Resources Code §29763 as set forth in Section 21080.22 of the Public Resources Code. Section 29763 of the Public Resources Code refers to local government amendments made for consistency with the Delta Protection Commission's regional plan.

(m) Minor alterations to utilities made for the purposes of complying with Sections 116410 and 116415 of the Health and Safety Code as set forth in Section 21080.26 of the Public Resources Code.

(n) The adoption of an ordinance exempting a city or county from the provisions of the Solar Shade Control Act as set forth in Section 25985 of the Public Resources Code.

(o) The acquisition of land by the Department of Transportation if received or acquired within a statewide or regional priority corridor designated pursuant to Section 65081.3 of the Government Code as set forth in Section 33911 of the Public Resources Code.

(p) The adoption or amendment of a nondisposal facility element as set forth in Section 41735 of the Public Resources Code.

(q) Cooperative agreements for the development of Solid Waste Management Facilities on Indian country as set forth in Section 44203(g) of the Public Resources Code.

(r) Determinations made regarding a city or county's regional housing needs as set forth in Section 65584 of the Government Code.

(s) Any action necessary to bring a general plan or relevant mandatory element of the general plan into compliance pursuant to a court order as set forth in Section 65759 of the Government Code.

(t) Industrial Development Authority activities as set forth in Section 91543 of the Government Code.

(u) Temporary changes in the point of diversion, place of use, of purpose of use due to a transfer or exchange of water or water rights as set forth in Section 1729 of the Water Code.

(v) The preparation and adoption of Urban Water Management Plans pursuant to the provisions of Section 10652 of the Water Code.

Note: Authority: Section 21083, Public Resources Code; References: Sections 5097.98(c), 21080.01, 21080.02, 21080.03, 21080.05, 21080.08, 21080.7, 21080.8, 21080.11, 21080.13, 21080.17, 21080.18, 21080.19, 21080.21, 21080.22, 21080.26, 25985, 33911, 41735, and 44203(g), Public Resources Code.

15283. HOUSING NEEDS ALLOCATION

CEQA does not apply to regional housing needs determinations made by the Department of Housing and Community Development, a council of governments, or a city or county pursuant to Section 65584 of the Government Code.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 65584, Government Code.

15284. PIPELINES

(a) CEQA does not apply to any project consisting of the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing hazardous or volatile liquid pipeline or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline.

(b) To qualify for this exemption, the diameter of the affected pipeline must not be increased and the project must be located outside the boundaries of an oil refinery. The project must also meet all of the following criteria:

(1) The affected section of pipeline is less than eight miles in length and actual construction and excavation activities are not undertaken over a length of more than one-half mile at a time.

(2) The affected section of pipeline is not less than eight miles distance from any section of pipeline that had been subject to this exemption in the previous 12 months.

(3) The project is not solely for the purpose of excavating soil that is contaminated by hazardous materials.

(4) To the extent not otherwise required by law, the person undertaking the project has, in advance of undertaking the project, prepared a plan that will result in notification of the appropriate agencies so that they may take action, if necessary, to provide for the emergency evacuation of members of the public who may be located in close proximity to the project, and those agencies, including but not limited to the local fire department, police, sheriff, and California Highway Patrol as appropriate, have reviewed and agreed to that plan.

(5) Project activities take place within an existing right-of-way and that right-of-way will be restored to its pre-project condition upon completion of the project.

(6) The project applicant will comply with all conditions otherwise authorized by law, imposed by the city or county as part of any local agency permit process, and to comply with the Keene-Nejedly California Wetlands Preservation Act (Public Resources Code Section 5810, et seq.), the California Endangered Species Act (Fish and Game Code Section 2050, et seq.), other applicable state laws, and all applicable federal laws.

(c) When the lead agency determines that a project meets all of the criteria of subdivisions (a) and (b), the party undertaking the project shall do all of the following:

(1) Notify in writing all responsible and trustee agencies, as well as any public agency with environmental, public health protection, or emergency response authority, of the lead agency's invocation of this exemption.

(2) Mail notice of the project to the last known name and address of all organizations and individuals who have previously requested such notice and notify the public in the affected area by at least one of the following procedures:

(A) Publication at least one time in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice on and off site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

The notice shall include a brief description of the proposed project and its location, and the date, time, and place of any public meetings or hearings on the proposed project. This notice may be combined with the public notice required under other law, as applicable, but shall meet the preceding minimum requirements.

(3) In the case of private rights-of-way over private property, receive from the underlying property owner permission for access to the property.

(4) Immediately inform the lead agency if any soil contaminated with hazardous materials is discovered.

(5) Comply with all conditions otherwise authorized by law, imposed by the city or county as part of any local agency permit process, and to comply with the Keene-Nejedly California Wetlands Preservation Act (Public Resources Code Section 5810, et seq.), the California Endangered Species Act (Fish and Game Code Section 2050, et seq.), other applicable state laws, and all applicable federal laws.

(d) For purposes of this section, "pipeline" is used as defined in subdivision (a) of Government Code Section 51010.5. This definition includes every intrastate pipeline used for the transportation of hazardous liquid substances or highly volatile liquid substances, including a common carrier pipeline, and all piping containing those substances located within a refined products bulk loading facility which is owned by a common carrier and is served by a pipeline of that common carrier, and the common carrier owns and serves by pipeline at least five such facilities in California.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080.23, Public Resources Code.

15285. TRANSIT AGENCY RESPONSES TO REVENUE SHORTFALLS

(a) CEQA does not apply to actions taken on or after July 1, 1995 to implement budget reductions made by a publicly owned transit agency as a result of a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities. Actions shall be limited to those directly undertaken by or financially supported in whole or in part by the transit agency pursuant to Section 15378(a)(1) or (2), including actions which reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity.

(b) When invoking this exemption, the transit agency shall make a specific finding that there is a fiscal emergency. Before taking its proposed budgetary actions and making the finding of fiscal emergency, the transit agency shall hold a public hearing. After this public hearing, the transit agency shall respond within 30 days at a regular public meeting to suggestions made by the public at that initial hearing. The transit agency may make the finding of fiscal emergency only after it has responded to public suggestions.

(c) For purposes of this subdivision, "fiscal emergency" means that the transit agency is projected to have negative working capital within one year from the date that the agency finds that a fiscal emergency exists. "Working capital" is defined as the sum of all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable, minus unrestricted accounts payable. Employee retirements funds, including deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, workers' compensation reserves, and insurance reserves shall not be included as working capital.

(d) This exemption does not apply to the action of any publicly owned transit agency to reduce or eliminate a transit service, facility, program, or activity that was approved or adopted as a mitigation measure in any environmental document certified or adopted by any public agency

under either CEQA or NEPA. Further, it does not apply to actions of the Los Angeles County Metropolitan Transportation Authority.

Note: Authority cited: Sections Section 21083, Public Resources Code; References: Sections 21080 and 21080.32, Public Resources Code.

Article 19. Categorical Exemptions

SECTIONS 15300 TO 15332

15300. CATEGORICAL EXEMPTIONS

Section 21084 of the Public Resources Code requires these Guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15300.1. RELATION TO MINISTERIAL PROJECTS

Section 21080 of the Public Resources Code exempts from the application of CEQA those projects over which public agencies exercise only ministerial authority. Since ministerial projects are already exempt, categorical exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. The inclusion of activities which may be ministerial within the classes and examples contained in this article shall not be construed as a finding by the Secretary for Resources that such an activity is discretionary.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15300.2. EXCEPTIONS

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21084 and 21084.1, Public Resources Code; *Wildlife Alive v. Chickering* (1977) 18 Cal.3d 190; *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 925; *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810; *Association for the Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720; and *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464

15300.3. REVISIONS TO LIST OF CATEGORICAL EXEMPTIONS

A public agency may, at any time, request that a new class of categorical exemptions be added, or an existing one amended or deleted. This request must be made in writing to the Office of Planning and Research and shall contain detailed information to support the request. The granting of such request shall be by amendment to these Guidelines.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15300.4. APPLICATION BY PUBLIC AGENCIES

Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes. Public agencies may omit from their implementing procedures classes and examples that do not apply to their activities, but they may not require EIRs for projects described in the classes and examples in this article except under the provisions of Section 15300.2.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15301. EXISTING FACILITIES

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use. Examples include but are not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor and publicly owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;

(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety).

(d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than:

(1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or

(2) 10,000 square feet if:

(A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and

(B) The area in which the project is located is not environmentally sensitive.

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off-premise signs;

(h) Maintenance of existing landscaping, native growth, and water supply reservoirs (excluding the use of pesticides, as defined in Section 12753, Division 7, Chapter 2, Food and Agricultural Code);

(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

(j) Fish stocking by the California Department of Fish and Game;

(k) Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt;

(l) Demolition and removal of individual small structures listed in this subdivision:

(1) One single-family residence. In urbanized areas, up to three single-family residences may be demolished under this exemption.

(2) A duplex or similar multifamily residential structure. In urbanized areas, this exemption applies to duplexes and similar structures where not more than six dwelling units will be demolished.

(3) A store, motel, office, restaurant, or similar small commercial structure if designed for an occupant load of 30 persons or less. In urbanized areas, the exemption also applies to the demolition of up to three such commercial buildings on sites zoned for such use.

(4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(m) Minor repairs and alterations to existing dams and appurtenant structures under the supervision of the Department of Water Resources.

(n) Conversion of a single family residence to office use.

(o) Installation, in an existing facility occupied by a medical waste generator, of a steam sterilization unit for the treatment of medical waste generated by that facility provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

(p) Use of a single-family residence as a small family day care home, as defined in Section 1596.78 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21084, Public Resources Code; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.

15302. REPLACEMENT OR RECONSTRUCTION

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

(a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50 percent.

(b) Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.

(c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.

(d) Conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15303. NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:

(a) One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.

(b) A duplex or similar multi-family residential structure, totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes and similar structures designed for not more than six dwelling units.

(c) A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

(d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction.

(e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(f) An accessory steam sterilization unit for the treatment of medical waste at a facility occupied by a medical waste generator, provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21084, Public Resources Code.

15304. MINOR ALTERATIONS TO LAND

Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. Examples include, but are not limited to:

(a) Grading on land with a slope of less than 10 percent, except that grading shall not be exempt in a waterway, in any wetland, in an officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazard such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.

(b) New gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping.

(c) Filling of earth into previously excavated land with material compatible with the natural features of the site;

(d) Minor alterations in land, water, and vegetation on existing officially designated wildlife management areas or fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production;

(e) Minor temporary use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc;

(f) Minor trenching and backfilling where the surface is restored;

(g) Maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies;

(h) The creation of bicycle lanes on existing rights-of-way.

(i) Fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. This exemption shall apply to fuel management activities within 100 feet of a structure if the public agency having fire protection responsibility for the area has determined that 100 feet of fuel clearance is required due to extra hazardous fire conditions.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15305. MINOR ALTERATIONS IN LAND USE LIMITATIONS

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to:

(a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;

(b) Issuance of minor encroachment permits;

(c) Reversion to acreage in accordance with the Subdivision Map Act.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15306. INFORMATION COLLECTION

Class 6 consists of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15307. ACTIONS BY REGULATORY AGENCIES FOR PROTECTION OF NATURAL RESOURCES

Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.

Note: Authority cited: Section 21083, Public Resources Codee; Reference: Section 21084, Public Resources Code.

15308. ACTIONS BY REGULATORY AGENCIES FOR PROTECTION OF THE ENVIRONMENT

Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environ—mental degradation are not included in this exemption.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code; *International Longshoremen's and Warehousemen's Union v. Board of Supervisors*, (1981) 116 Cal. App. 3d 265.

15309. INSPECTIONS

Class 9 consists of activities limited entirely to inspections, to check for performance of an operation, or quality, health, or safety of a project, including related activities such as inspection for possible mislabeling, misrepresentation, or adulteration of products.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15310. LOANS

Class 10 consists of loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions. Class 10 includes but is not limited to the following examples:

(a) Loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943.

(b) Purchases of mortgages from banks and mortgage companies by the Public Employees Retirement System and by the State Teachers Retirement System.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15311. ACCESSORY STRUCTURES

Class 11 consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to:

(a) On-premise signs;

(b) Small parking lots;

(c) Placement of seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms, or similar items in generally the same locations from time to time in publicly owned parks, stadiums, or other facilities designed for public use.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15312. SURPLUS GOVERNMENT PROPERTY SALES

Class 12 consists of sales of surplus government property except for parcels of land located in an area of statewide, regional, or areawide concern identified in Section 15206(b)(4). However, even if the surplus property to be sold is located in any of those areas, its sale is exempt if:

(a) The property does not have significant values for wildlife habitat or other environmental purposes, and

(b) Any of the following conditions exist:

(1) The property is of such size, shape, or inaccessibility that it is incapable of independent development or use; or

(2) The property to be sold would qualify for an exemption under any other class of categorical exemption in these Guidelines; or

(3) The use of the property and adjacent property has not changed since the time of purchase by the public agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15313. ACQUISITION OF LANDS FOR WILDLIFE CONSERVATION PURPOSES

Class 13 consists of the acquisition of lands for fish and wildlife conservation purposes including (a) preservation of fish and wildlife habitat, (b) establishing ecological reserves under Fish and Game Code Section 1580, and (c) preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21084, Public Resources Code.

15314. MINOR ADDITIONS TO SCHOOLS

Class 14 consists of minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less. The addition of portable classrooms is included in this exemption.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15315. MINOR LAND DIVISIONS

Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent.

Note: Authority cited: Sections Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15316. TRANSFER OF OWNERSHIP OF LAND IN ORDER TO CREATE PARKS

Class 16 consists of the acquisition, sale, or other transfer of land in order to establish a park where the land is in a natural condition or contains historical or archaeological resources and either:

(a) The management plan for the park has not been prepared, or

(b) The management plan proposes to keep the area in a natural condition or preserve the historic or archaeological resources. CEQA will apply when a management plan is proposed that will change the area from its natural condition or cause substantial adverse change in the significance of the historic or archaeological resource.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21084, 21083.2, and 21084.1, Public Resources Code.

15317. OPEN SPACE CONTRACTS OR EASEMENTS

Class 17 consists of the establishment of agricultural preserves, the making and renewing of open space contracts under the Williamson Act, or the acceptance of easements or fee interests in order to maintain the open space character of the area. The cancellation of such preserves, contracts, interests, or easements is not included and will normally be an action subject to the CEQA process.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15318. DESIGNATION OF WILDERNESS AREAS

Class 18 consists of the designation of wilderness areas under the California Wilderness System.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15319. ANNEXATIONS OF EXISTING FACILITIES AND LOTS FOR EXEMPT FACILITIES

Class 19 consists of only the following annexations:

(a) Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning of either the gaining or losing governmental agency whichever is more restrictive, provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities.

(b) Annexations of individual small parcels of the minimum size for facilities exempted by Section 15303, New Construction or Conversion of Small Structures.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15320. CHANGES IN ORGANIZATION OF LOCAL AGENCIES

Class 20 consists of changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised. Examples include but are not limited to:

(a) Establishment of a subsidiary district;

(b) Consolidation of two or more districts having identical powers;

(c) Merger with a city of a district lying entirely within the boundaries of the city.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15321. ENFORCEMENT ACTIONS BY REGULATORY AGENCIES

Class 21 consists of:

(a) Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following:

(1) The direct referral of a violation of lease, permit, license, certificate, or entitlement for use or of a general rule, standard, or objective to the Attorney General, District Attorney, or City Attorney as appropriate, for judicial enforcement;

(2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.

(b) Law enforcement activities by peace officers acting under any law that provides a criminal sanction;

(c) Construction activities undertaken by the public agency taking the enforcement or revocation action are not included in this exemption.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15322. EDUCATIONAL OR TRAINING PROGRAMS INVOLVING NO PHYSICAL CHANGES

Class 22 consists of the adoption, alteration, or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures. Examples include but are not limited to:

(a) Development of or changes in curriculum or training methods.

(b) Changes in the grade structure in a school which do not result in changes in student transportation.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15323. NORMAL OPERATIONS OF FACILITIES FOR PUBLIC GATHERINGS

Class 23 consists of the normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose. For the purposes of this section, "past history" shall mean that the same or similar kind of activity has been occurring for at least three years and that there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility. Facilities included within this exemption include, but are not limited to, racetracks, stadiums, convention centers, auditoriums, amphitheaters, planetariums, swimming pools, and amusement parks.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15324. REGULATIONS OF WORKING CONDITIONS

Class 24 consists of actions taken by regulatory agencies, including the Industrial Welfare Commission as authorized by statute, to regulate any of the following:

(a) Employee wages,

(b) Hours of work, or

(c) Working conditions where there will be no demonstrable physical changes outside the place of work.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15325. TRANSFERS OF OWNERSHIP OF INTEREST IN LAND TO PRESERVE EXISTING NATURAL CONDITIONS AND HISTORICAL RESOURCES

Class 25 consists of the transfers of ownership of interests in land in order to preserve open space, habitat, or historical resources. Examples include but are not limited to:

(a) Acquisition, sale, or other transfer of areas to preserve the existing natural conditions, including plant or animal habitats.

(b) Acquisition, sale, or other transfer of areas to allow continued agricultural use of the areas.

(c) Acquisition, sale, or other transfer to allow restoration of natural conditions, including plant or animal habitats.

(d) Acquisition, sale, or other transfer to prevent encroachment of development into flood plains.

(e) Acquisition, sale, or other transfer to preserve historical resources.

(f) Acquisition, sale, or other transfer to preserve open space or lands for park purposes.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15326. ACQUISITION OF HOUSING FOR HOUSING ASSISTANCE PROGRAMS

Class 26 consists of actions by a redevelopment agency, housing authority, or other public agency to implement an adopted Housing Assistance Plan by acquiring an interest in housing units. The housing units may be either in existence or possessing all required permits for construction when the agency makes its final decision to acquire the units.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15327. LEASING NEW FACILITIES

(a) Class 27 consists of the leasing of a newly constructed or previously unoccupied privately owned facility by a local or state agency where the local governing authority determined that the building was exempt from CEQA. To be exempt under this section, the proposed use of the facility:

  (1) Shall be in conformance with existing state plans and policies and with general, community, and specific plans for which an EIR or Negative Declaration has been prepared;

  (2) Shall be substantially the same as that originally proposed at the time the building permit was issued;

  (3) Shall not result in a traffic increase of greater than 10% of front access road capacity; and

  (4) Shall include the provision of adequate employee and visitor parking facilities.

(b) Examples of Class 27 include, but are not limited to:

  (1) Leasing of administrative offices in newly constructed office space;

  (2) Leasing of client service offices in newly constructed retail space;

  (3) Leasing of administrative and/or client service offices in newly constructed industrial parks.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15328. SMALL HYDROELECTRIC PROJECTS AT EXISTING FACILITIES

Class 28 consists of the installation of hydroelectric generating facilities in connection with existing dams, canals, and pipelines where:

(a) The capacity of the generating facilities is 5 megawatts or less;

(b) Operation of the generating facilities will not change the flow regime in the affected stream, canal, or pipeline including but not limited to:

  (1) Rate and volume of flow;

  (2) Temperature;

  (3) Amounts of dissolved oxygen to a degree that could adversely affect aquatic life; and

  (4) Timing of release.

(c) New power lines to connect the generating facilities to existing power lines will not exceed one mile in length if located on a new right of way and will not be located adjacent to a wild or scenic river;

(d) Repair or reconstruction of the diversion structure will not raise the normal maximum surface elevation of the impoundment;

(e) There will be no significant upstream or downstream passage of fish affected by the project;

(f) The discharge from the power house will not be located more than 300 feet from the toe of the diversion structure;

(g) The project will not cause violations of applicable state or federal water quality standards;

(h) The project will not entail any construction on or alteration of a site included in or eligible for inclusion in the National Register of Historic Places; and

(i) Construction will not occur in the vicinity of any endangered, rare, or threatened species.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15329. COGENERATION PROJECTS AT EXISTING FACILITIES

Class 29 consists of the installation of cogeneration equipment with a capacity of 50 megawatts or less at existing facilities meeting the conditions described in this section.

(a) At existing industrial facilities, the installation of cogeneration facilities will be exempt where it will:

  (1) Result in no net increases in air emissions from the industrial facility, or will produce emissions lower than the amount that would require review under the new source review rules applicable in the county, and

  (2) Comply with all applicable state, federal, and local air quality laws.

(b) At commercial and institutional facilities, the installation of cogeneration facilities will be exempt if the installation will:

  (1) Meet all the criteria described in subdivision (a);

  (2) Result in no noticeable increase in noise to nearby residential structures;

  (3) Be contiguous to other commercial or institutional structures.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15330. MINOR ACTIONS TO PREVENT, MINIMIZE, STABILIZE, MITIGATE OR ELIMINATE THE RELEASE OR THREAT OF RELEASE OF HAZARDOUS WASTE OR HAZARDOUS SUBSTANCES

Class 30 consists of any minor cleanup actions taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance which are small or medium removal actions costing $1 million or less.

(a) No cleanup action shall be subject to this Class 30 exemption if the action requires the onsite use of a hazardous waste incinerator or thermal treatment unit or the relocation of residences or businesses, or the action involves the potential release into the air of volatile organic compounds as defined in Health and Safety Code Section 25123.6, except for small scale in situ soil vapor extraction and treatment systems which have been permitted by the local Air Pollution Control District or Air Quality Management District. All actions must be consistent with applicable state and local environmental permitting requirements including, but not limited to, off-site disposal, air quality rules such as those governing volatile organic compounds and water quality standards, and approved by the regulatory body with jurisdiction over the site.

(1) Removal of sealed, non-leaking drums or barrels of hazardous waste or substances that have been stabilized, containerized and are designated for a lawfully permitted destination;

(2) Maintenance or stabilization of berms, dikes, or surface impoundments;

(3) Construction or maintenance or interim of temporary surface caps;

(4) Onsite treatment of contaminated soils or sludges provided treatment system meets Title 22 requirements and local air district requirements;

(5) Excavation and/or offsite disposal of contaminated soils or sludges in regulated units;

(6) Application of dust suppressants or dust binders to surface soils;

(7) Controls for surface water run-on and run-off that meets seismic safety standards;

(8) Pumping of leaking ponds into an enclosed container;

(9) Construction of interim or emergency ground water treatment systems;

(10) Posting of warning signs and fencing for a hazardous waste or substance site that meets legal requirements for protection of wildlife.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15331. HISTORICAL RESOURCE RESTORATION/REHABILITATION

Class 31 consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15332. IN-FILL DEVELOPMENT PROJECTS

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

(c) The project site has no value as habitat for endangered, rare or threatened species.

(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

(e) The site can be adequately served by all required utilities and public services.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

15333. SMALL HABITAT RESTORATION PROJECTS.

Class 33 consists of projects not to exceed five acres in size to assure the maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife provided that:

(a) There would be no significant adverse impact on endangered, rare or threatened species or their habitat pursuant to section 15065,

(b) There are no hazardous materials at or around the project site that may be disturbed or removed, and

(c) The project will not result in impacts that are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(d) Examples of small restoration projects may include, but are not limited to:

(1) revegetation of disturbed areas with native plant species;

(2) wetland restoration, the primary purpose of which is to improve conditions for waterfowl or other species that rely on wetland habitat;

(3) stream or river bank revegetation, the primary purpose of which is to improve habitat for amphibians or native fish;

(4) projects to restore or enhance habitat that are carried out principally with hand labor and not mechanized equipment.

(5) stream or river bank stabilization with native vegetation or other bioengineering techniques, the primary purpose of which is to reduce or eliminate erosion and sedimentation; and

(6) culvert replacement conducted in accordance with published guidelines of the Department of Fish and Game or NOAA Fisheries, the primary purpose of which is to improve habitat or reduce sedimentation.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

Article 20. Definitions

SECTIONS 15350 TO 15387

15350. GENERAL

The definitions contained in this article apply to terms used throughout the Guidelines unless a term is otherwise defined in a particular section.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21083, Public Resources Code.

15351. APPLICANT

"Applicant" means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement for use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21065, Public Resources Code.

15352. APPROVAL

(a) "Approval" means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. The exact date of approval of any project is a matter determined by each public agency according to its rules, regulations, and ordinances. Legislative action in regard to a project often constitutes approval.

(b) With private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21061 and 21065, Public Resources Code.

15353. CEQA

"CEQA" means the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21050, Public Resources Code.

15354. CATEGORICAL EXEMPTION

"Categorical exemption" means an exemption from CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080(b)(10) and 21084, Public Resources Code.

15355. CUMULATIVE IMPACTS

"Cumulative impacts" refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

(a) The individual effects may be changes resulting from a single project or a number of separate projects.

(b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21083(b), Public Resources Code; *Whitman v. Board of Supervisors*, 88 Cal. App. 3d 397, *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal. App. 3d 61, Formerly Section 15023.5.

15356. DECISION-MAKING BODY

"Decision-making body" means any person or group of people within a public agency permitted by law to approve or disapprove the project at issue.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21003(b), Public Resources Code; *Kleist v. City of Glendale*, (1976) 56 Cal. App. 3d 770.

15357. DISCRETIONARY PROJECT

"Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations. A timber harvesting

plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code Sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c).

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(a), Public Resources Code; *Johnson v. State of California*, (1968) 69 Cal. 2d 782; *People v. Department of Housing and Community Development*, (1975) 45 Cal. App. 3d 185; *Day v. City of Glendale*, (1975) 51 Cal. App. 3d 817; *N.R.D.C. v. Arcata National Corp.*, (1976) 59 Cal. App. 3d 959.

15358. EFFECTS

"Effects" and "impacts" as used in these Guidelines are synonymous.

(a) Effects include:

(1) Direct or primary effects which are caused by the project and occur at the same time and place.

(2) Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(b) Effects analyzed under CEQA must be related to a physical change.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21068 and 21100, Public Resources Code.

15359. EMERGENCY

"Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(b)(2), (3), and (4), Public Resources Code.

15360. ENVIRONMENT

"Environment" means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The "environment" includes both natural and man-made conditions.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21060.5, Public Resources Code.

15361. ENVIRONMENTAL DOCUMENTS

"Environmental documents" means Initial Studies, Negative Declarations, draft and final EIRs, documents prepared as substitutes for EIRs and Negative Declarations under a program certified pursuant to Public Resources Code Section 21080.5, and documents prepared under NEPA and used by a state or local agency in the place of an Initial Study, Negative Declaration, or an EIR.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21061, 21080(b), 21080.5, 21108, and 21152, Public Resources Code.

15362. EIR - ENVIRONMENTAL IMPACT REPORT

"EIR" or "Environmental Impact Report" means a detailed statement prepared under CEQA describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects. The contents of an EIR are discussed in Article 9, commencing with Section 15120 of these Guidelines. The term "EIR" may mean either a draft or a final EIR depending on the context.

(a) Draft EIR means an EIR containing the information specified in Sections 15122 through 15131.

(b) Final EIR means an EIR containing the information contained in the draft EIR, comments either verbatim or in summary received in the review process, a list of persons commenting, and the response of the Lead Agency to the comments received. The final EIR is discussed in detail in Section 15132.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21061, 21100, and 21151, Public Resources Code.

15363. EIS - ENVIRONMENTAL IMPACT STATEMENT

"EIS" or "Environmental Impact Statement" means an environmental impact document prepared pursuant to the National Environmental Policy Act (NEPA). NEPA uses the term EIS in the place of the term EIR which is used in CEQA.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21083.5, 21083.6, and 21083.7, Public Resources Code; 43 U.S.C.A. 4322(2)(c).

15364. FEASIBLE

"Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002, 21002.1, 21004, 21061.1, 21080.5, and 21081, Public Resources Code; Section 4, Chapter 1438 of the Statutes of 1982.

15364.5. GREENHOUSE GAS

"Greenhouse gas" or "greenhouse gases" includes but is not limited to: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Section 38505(g) Health and Safety Code; Section 21083.05, Public Resources Code.

15365. INITIAL STUDY

"Initial Study" means a preliminary analysis prepared by the Lead Agency to determine whether an EIR or a Negative Declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR. Use of the Initial Study is discussed in Article 5, commencing with Section 15060.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080.1, 21080.2, 21080.3, and 21100, Public Resources Code.

15366. JURISDICTION BY LAW

(a) "Jurisdiction by law" means the authority of any public agency:

(1) To grant a permit or other entitlement for use;

(2) To provide funding for the project in question; or

(3) To exercise authority over resources which may be affected by the project.

(b) A city or county will have jurisdiction by law with respect to a project when the city or county having primary jurisdiction over the area involved is:

(1) The site of the project;

(2) The area in which the major environmental effects will occur; and/or

(3) The area in which reside those citizens most directly concerned by any such environmental effects.

(c) Where an agency having jurisdiction by law must exercise discretionary authority over a project in order for the project to proceed, it is also a Responsible Agency, see Section 15381, or the Lead Agency, see Section 15367.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080.3, 21080.4, 21104, and 21153, Public Resources Code.

15367. LEAD AGENCY

"Lead Agency" means the public agency which has the principal responsibility for carrying out or approving a project. The Lead Agency will decide whether an EIR or Negative Declaration will be required for the project and will cause the document to be prepared. Criteria for determining which agency will be the Lead Agency for a project are contained in Section 15051.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21165, Public Resources Code.

15368. LOCAL AGENCY

"Local agency" means any public agency other than a state agency, board, or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special districts, redevelopment agencies, local agency formation commissions, and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21062 and 21151, Public Resources Code.

15369. MINISTERIAL

"Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(b)(1), Public Resources Code; *Johnson v. State of California*, 69 Cal. 2d 782; *Day v. City of Glendale*, 51 Cal. App. 3d 817.

15369.5. MITIGATED NEGATIVE DECLARATION

"Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the

effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21064.5, Public Resources Code.

15370. MITIGATION

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002, 21002.1, 21081, and 21100(c), Public Resources Code.

15371. NEGATIVE DECLARATION

"Negative Declaration" means a written statement by the Lead Agency briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and therefore does not require the preparation of an EIR. The contents of a Negative Declaration are described in Section 15071.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(c), Public Resources Code.

15372. NOTICE OF COMPLETION

"Notice of Completion" means a brief notice filed with the Office of Planning and Research by a Lead Agency as soon as it has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21161, Public Resources Code.

15373. NOTICE OF DETERMINATION

"Notice of Determination" means a brief notice to be filed by a public agency after it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this notice are explained in Sections 15075 and 15094.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21108(a) and 21152, Public Resources Code.

15374. NOTICE OF EXEMPTION

"Notice of Exemption" means a brief notice which may be filed by a public agency after it has decided to carry out or approve a project and has determined that the project is exempt from CEQA as being ministerial, categorically exempt, an emergency, or subject to another exemption from CEQA. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project. The contents of this notice are explained in Section 15062.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21108(b) and 21152(b), Public Resources Code.

15375. NOTICE OF PREPARATION

"Notice of Preparation" means a brief notice sent by a Lead Agency to notify the Responsible Agencies, Trustee Agencies, the Office of Planning and Research, and involved federal agencies that the Lead Agency plans to prepare an EIR for the project. The purpose of the notice is to solicit guidance from those agencies as to the scope and content of the environmental information to be included in the EIR. Public agencies are free to develop their own formats for this notice. The contents of this notice are described in Section 15082.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080.4, Public Resources Code.

15376. PERSON

"Person" includes any person, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, city, county, city and county, town, the state, and any of the agencies and political subdivisions of such entities, and to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21066, Public Resources Code.

15377. PRIVATE PROJECT

A "private project" means a project which will be carried out by a person other than a governmental agency, but the project will need a discretionary approval from one or more governmental agencies for:

(a) A contract or financial assistance, or

(b) A lease, permit, license, certificate, or other entitlement for use.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21065, Public Resources Code.

15378. PROJECT

(a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

  (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.

  (2) An activity undertaken by a person which is supported in whole or in part through public agency contacts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

  (3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

  (1) Proposals for legislation to be enacted by the State Legislature;

  (2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (except as they are applied to specific instances covered above);

  (3) The submittal of proposals to a vote of the people of the state or of a particular community that does not involve a public agency sponsored initiative. (*Stein v. City of Santa Monica*

(1980) 110 Cal.App.3d 458; *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165);

(4) The creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

(5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

(c) The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

(d) Where the Lead Agency could describe the project as either the adoption of a particular regulation under subdivision (a)(1) or as a development proposal which will be subject to several governmental approvals under subdivision (a)(2) or (a)(3), the Lead Agency shall describe the project as the development proposal for the purpose of environmental analysis. This approach will implement the Lead Agency principle as described in Article 4.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21065, Public Resources Code; *Kaufman and Broad-South Bay, Inc. v. Morgan Hill Unified School District* (1992) 9 Cal.App.4th 464; *Fullerton Joint Union High School District v. State Board of Education* (1982) 32 Cal.3d 779; *Simi Valley Recreation and Park District v. Local Agency Formation Commission of Ventura County* (1975) 51 Cal.App.3d 648; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

15379. PUBLIC AGENCY

"Public agency" includes any state agency, board, or commission and any local or regional agency, as defined in these Guidelines. It does not include the courts of the state. This term does not include agencies of the federal government.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21063, Public Resources Code.

15380. ENDANGERED, RARE OR THREATENED SPECIES

(a) "Species" as used in this section means a species or subspecies of animal or plant or a variety of plant.

(b) A species of animal or plant is:

(1) "Endangered" when its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors; or

(2) "Rare" when either:

(A) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or

(B) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered "threatened" as that term is used in the Federal Endangered Species Act.

(c) A species of animal or plant shall be presumed to be endangered, rare or threatened, as it is listed in:

(1) Sections 670.2 or 670.5, Title 14, California Code of Regulations; or

(2) Title 50, Code of Federal Regulations Section 17.11 or 17.12 pursuant to the Federal Endangered Species Act as rare, threatened, or endangered.

(d) A species not included in any listing identified in subdivision (c) shall nevertheless be considered to be endangered, rare or threatened, if the species can be shown to meet the criteria in subdivision (b).

(e) This definition shall not include any species of the Class Insecta which is a pest whose protection under the provisions of CEQA would present an overwhelming and overriding risk to man as determined by:

(1) The Director of Food and Agriculture with regard to economic pests; or

(2) The Director of Health Services with regard to health risks.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21001(c), Public Resources Code.

15381. RESPONSIBLE AGENCY

"Responsible Agency" means a public agency which proposes to carry out or approve a project, for which a Lead Agency is preparing or has prepared an EIR or Negative Declaration. For the purposes of CEQA, the term "Responsible Agency" includes all public agencies other than the Lead Agency which have discretionary approval power over the project.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002.1, 21069, 21080.1, 21080.3, 21080.4, 21167.2, and 21167.3, Public Resources Code.

15382. SIGNIFICANT EFFECT ON THE ENVIRONMENT

"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21068, 21083, 21100, and 21151, Public Resources Code; *Hecton v. People of the State of California*, 58 Cal. App. 3d 653.

15383. STATE AGENCY

"State agency" means a governmental agency in the executive branch of the State Government or an entity which operates under the direction and control of an agency in the executive branch of State Government and is funded primarily by the State Treasury.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21100, Public Resources Code.

15384. SUBSTANTIAL EVIDENCE

(a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21080, 21082.2, 21168, and 21168.5, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68; *Running Fence Corp. v. Superior Court* (1975) 51 Cal.App.3d 400; *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988.

15385. TIERING

"Tiering" refers to the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site-specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared. Tiering is appropriate when the sequence of EIRs is:

(a) From a general plan, policy, or program EIR to a program, plan, or policy EIR of lesser scope or to a site-specific EIR;

(b) From an EIR on a specific action at an early stage to a subsequent EIR or a supplement to an EIR at a later stage. Tiering in such cases is appropriate when it helps the Lead Agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

Note: Authority cited: Sections Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

15386. TRUSTEE AGENCY

"Trustee Agency" means a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee Agencies include:

(a) The California Department of Fish and Game with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to game refuges, ecological reserves, and other areas administered by the department;

(b) The State Lands Commission with regard to state owned "sovereign" lands such as the beds of navigable waters and state school lands;

(c) The State Department of Parks and Recreation with regard to units of the State Park System;

(d) The University of California with regard to sites within the Natural Land and Water Reserves System.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080.3 and 21080.4, Public Resources Code.

15387. URBANIZED AREA

"Urbanized area" means a central city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile. A Lead Agency shall determine whether a particular area meets the criteria in this section either by examining the area or by referring to a map prepared by the U.S. Bureau of the Census which designates the area as urbanized. Maps of the designated urbanized areas can be found in the California EIR Monitor of February 7, 1979. The maps are also for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The maps are sold in sets only as Stock Number 0301-3466. Use of the term "urbanized area" in Section 15182 is limited to areas mapped and designated as urbanized by the U.S. Bureau of the Census.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21080.7 and 21083, and 21084, Public Resources Code.

CEQA Guidelines Appendices

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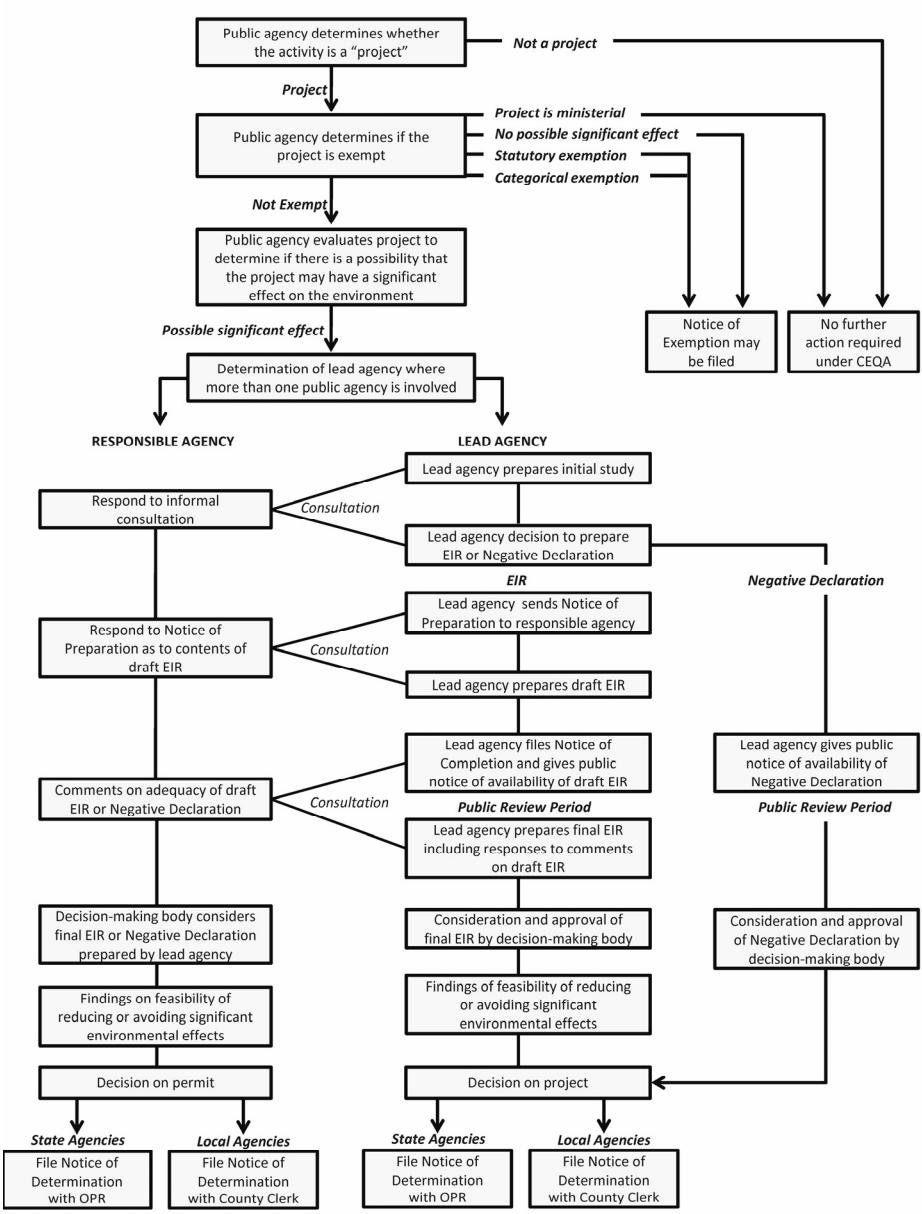
CEQA APPENDIX A:
CEQA PROCESS FLOW CHART



CEQA APPENDIX B: STATUTORY AUTHORITY OF STATE DEPARTMENTS

Bay Conservation and Development Commission	Air Resources Board	Resources Agency		Health Services		Savings and Loan	Real Estate	Caltrans	Dept of Housing and Community Development	Dept of Motor Vehicles	Corporations	California Highway Patrol	Aeronautics		Food and Agriculture	STATUTORY AUTHORITY OF STATE DEPARTMENTS
	X			X						X		16	X		1	1. Air quality and air pollution control
				X											X	2. Chemical contamination and food products
26				7												3. Coastal areas, wetlands, estuaries, waterfowl refuges, and beaches
	24			8			X		X							4. Congestion in urban areas, housing, and building displacement
				X											X	5. Disease control
	X			X												6. Electric energy generation and supply
				9			X	X	X							7. Environmental effects with special impact in low-income neighborhoods
							X								X	8. Flood plains and watersheds
				X											X	9. Food additives and food sanitation
		X		X											X	10. Herbicides
								X								11. Historic and archaeological sites
	X			X											2	12. Human ecology
				X											X	13. Microbiological contamination
																14. Mineral land reclamation
																15. Natural gas energy development generation and supply
	16			10									X			16. Navigable airways
25																17. Navigable waterways
				X								X	X			18. Noise control and abatement
25															X	19. Parks, forests, trees and outdoor recreation areas
		X		X											X	20. Pesticides
		X		X												21. Radiation and radiological health
	24			11		X	X	X	X				X			22. Regional comprehensive planning
				X											X	23. Rodent control
				X											3	24. Sanitation and waste systems
				X												25. Shellfish sanitation
															X	26. Soil and plant life, sedimentation, erosion, and hydrologic conditions
				X											X	27. Toxic Materials
				X						X		X			4	28. Transportation and handling of hazardous materials
				X											X	29. Water quality and water pollution control
				12											5	30. Fish and wildlife
25				13												31. Activities with special impact on regional jurisdictions
	24															32. Water project formulation
	24															33. Geothermal energy
																34. Oil and petroleum development, generation and supply
																35. Statewide land use patterns
	24															36. Open space policy
								X								37. Statewide overview — cumulative impact of separate projects
									X							38. Seismic hazards

APPENDIX B

continued

Office of Planning & Research	Native American Heritage Commission	Water Resources	State Water Resources Control Board	State Reclamation Board	State Lands Commission	Solid Waste Mgmt Board	Parks and Recreation	Forestry	Fish and Game	Energy Commission	Conservation	Colorado River Board	CTRPA	Coastal Commission	Boating and Waterways	
			X								X		27			1. Air quality and air pollution control
			X						X							2. Chemical contamination and food products
		X	X		X		X		X		X	14	27	26	X	3. Coastal areas, wetlands, estuaries, waterfowl refuges, and beaches
			21										27	26		4. Congestion in urban areas, housing, and building displacement
			X					22	X			14				5. Disease control
		X					X	23	X	X		14		26	X	6. Electric energy generation and supply
							19									7. Environmental effects with special impact in low-income neighborhoods
		X		20	X		X		X		X	14	27	26		8. Flood plains and watersheds
																9. Food additives and food sanitation
			X				X	22	X			14				10. Herbicides
	X				X		X						27	26		11. Historic and archaeological sites
X							X		X				27	26		12. Human ecology
			X						X			14				13. Microbiological contamination
					X		X		X		X		27	26		14. Mineral land reclamation
					X				15	X	X			26		15. Natural gas energy development generation and supply
									16							16. Navigable airways
				20	X				X			14	27	26	X	17. Navigable waterways
									17							18. Noise control and abatement
	X				X		X		X		X	14	27	26	X	19. Parks, forests, trees and outdoor recreation areas
		X	X				X	22	X							20. Pesticides
									X	X		14				21. Radiation and radiological health
X		X	X		X		X		X	X	X	14	27	26	X	22. Regional comprehensive planning
							X	22	X							23. Rodent control
		X	X			X			18		X	14		26		24. Sanitation and waste systems
			X						X							25. Shellfish sanitation
		X	X		X		X		X		X	14	27	26		26. Soil and plant life, sedimentation, erosion, and hydrologic conditions
			X			X	X		X			14				27. Toxic Materials
			X							X	X					28. Transportation and handling of hazardous materials
		X	X						X		X	14	27	26	X	29. Water quality and water pollution control
			21				X		X			14	27	26		30. Fish and wildlife
		X		20			X					14	27	26		31. Activities with special impact on regional jurisdictions
		X	X	20			X	23	X			14			X	32. Water project formulation
		X	21		X				X	X	X	14				33. Geothermal energy
			21		X				X	X	X			26		34. Oil and petroleum development, generation and supply
X					X				X	X	X		27	26		35. Statewide land use patterns
X	X				X				X		X		27	26		36. Open space policy
X										X						37. Statewide overview — cumulative impact of separate projects
		X								X	X		27	26		38. Seismic hazards

APPENDIX B FOOTNOTES

1. **Food and Agriculture** - Effects on plants and animals.
2. **Food and Agriculture** - Protection of food and fiber.
3. **Food and Agriculture** - Agricultural, dairy and feed lot Systems.
4. **Food and Agriculture** - As pertains to transportation, handling, storage and decontamination of pesticides.
5. **Food and Agriculture** - Pesticide effects, predatory animal control, bird control.
6. **California Highway Patrol** - Enforcement of motor vehicle regulations.
7. **Health Services - Beach sanitation,** water pollution, solid waste and mosquito control.
8. **Health Services** - Pertains to health component.
9. **Health Services** - Most if these are strongly related to health.
10. **Health Services -** Pertains to noise.
11. **Health Services** - Pertains to personal and environmental health components.
12. **Health Services** - As it may pertain to human health hazards.
13. **Health Services** - Pertains to comprehensive health planning.
14. **Colorado River Board** - As pertains to the Colorado, New and Alamo Rivers.
15. **Fish and Game** - As field development and distribution systems may affect fish and wildlife.
16. **Fish and Game** - As may affect migrating and resident wildlife.
17. **Fish and Game -** As excessive noise may affect wildlife.
18. Fish and Game - As water quality may affect fish and wildlife.
19. **Parks and Recreation - In impacted** areas only.
20. **Reclamation Board** - In areas of Board's jurisdiction only — the Sacramento-San Joaquin Valley.
21. **State Water Resources Control Board** - As may pertain to water quality.
22. **Forestry** - With respect to forest land.
23. **Forestry** - (6) and (32) - As related to fire protection or State (fire protection) responsibility land.
24. **Air Resources Board** - (4), (22), (32), (33), and (36) - As may pertain to residential, commercial, industrial or transportation growth.
25. **San Francisco Bay Conservation and Development Commission** - (3), (17), (19), and (30) - With respect to San Francisco Bay, Suisun Bay and adjacent shore areas.
26. **California Coastal Commission -** (3), (4), (6), (8), (11), (12), (14), (15), (17), (19), (22), (23), (26), (29), (30), (31), (34), (35), and (36) - With respect to effects within the California Coastal Zone.
27. **California Tahoe Regional Planning Agency** - With respect to effects in theTahoe Basin.
28. **Native American Heritage Commission** - With respect to places of special religious or social significance to Native Americans including archaeological sites, cemeteries, and places of worship.

NOTE: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080.3, 21080.4, 21104, and 21153, Public Resources Code.

CEQA APPENDIX C:
NOTICE OF COMPLETION & ENVIRONMENTAL DOCUMENT TRANSMITTAL

Appendix C

Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH #

Project Title: _____

Lead Agency: _____ Contact Person: _____
Mailing Address: _____ Phone: _____
City: _____ Zip: _____ County: _____

Project Location: County: _____ City/Nearest Community: _____
Cross Streets: _____ Zip Code: _____
Longitude/Latitude (degrees, minutes and seconds): ____° ____′ ____″ N / ____° ____′ ____″ W Total Acres: _____
Assessor's Parcel No.: _____ Section: _____ Twp.: _____ Range: _____ Base: _____
Within 2 Miles: State Hwy #: _____ Waterways: _____
Airports: _____ Railways: _____ Schools: _____

Document Type:

CEQA: ☐ NOP ☐ Draft EIR
☐ Early Cons ☐ Supplement/Subsequent EIR
☐ Neg Dec (Prior SCH No.) _____
☐ Mit Neg Dec Other: _____

NEPA: ☐ NOI ☐ EA ☐ Draft EIS ☐ FONSI

Other: ☐ Joint Document ☐ Final Document ☐ Other: _____

Local Action Type:

☐ General Plan Update ☐ Specific Plan ☐ Rezone ☐ Annexation
☐ General Plan Amendment ☐ Master Plan ☐ Prezone ☐ Redevelopment
☐ General Plan Element ☐ Planned Unit Development ☐ Use Permit ☐ Coastal Permit
☐ Community Plan ☐ Site Plan ☐ Land Division (Subdivision, etc.) ☐ Other: _____

Development Type:

☐ Residential: Units _____ Acres _____
☐ Office: Sq.ft. _____ Acres _____ Employees _____
☐ Commercial: Sq.ft. _____ Acres _____ Employees _____
☐ Industrial: Sq.ft. _____ Acres _____ Employees _____
☐ Educational: _____
☐ Recreational: _____
☐ Water Facilities: Type _____ MGD _____

☐ Transportation: Type _____
☐ Mining: Mineral _____
☐ Power: Type _____ MW _____
☐ Waste Treatment: Type _____ MGD _____
☐ Hazardous Waste: Type _____
☐ Other: _____

Project Issues Discussed in Document:

☐ Aesthetic/Visual ☐ Fiscal ☐ Recreation/Parks ☐ Vegetation
☐ Agricultural Land ☐ Flood Plain/Flooding ☐ Schools/Universities ☐ Water Quality
☐ Air Quality ☐ Forest Land/Fire Hazard ☐ Septic Systems ☐ Water Supply/Groundwater
☐ Archeological/Historical ☐ Geologic/Seismic ☐ Sewer Capacity ☐ Wetland/Riparian
☐ Biological Resources ☐ Minerals ☐ Soil Erosion/Compaction/Grading ☐ Growth Inducement
☐ Coastal Zone ☐ Noise ☐ Solid Waste ☐ Land Use
☐ Drainage/Absorption ☐ Population/Housing Balance ☐ Toxic/Hazardous ☐ Cumulative Effects
☐ Economic/Jobs ☐ Public Services/Facilities ☐ Traffic/Circulation ☐ Other: _____

Present Land Use/Zoning/General Plan Designation:

Project Description: *(please use a separate page if necessary)*

Note: The State Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g. Notice of Preparation or previous draft document) please fill in.

Revised 2008

APPENDIX C

continued

Reviewing Agencies Checklist

Lead Agencies may recommend State Clearinghouse distribution by marking agencies below with and "**X**".
If you have already sent your document to the agency please denote that with an "**S**".

_____ Air Resources Board
_____ Boating & Waterways, Department of
_____ California Highway Patrol
_____ Caltrans District # _____
_____ Caltrans Division of Aeronautics
_____ Caltrans Planning
_____ Central Valley Flood Protection Board
_____ Coachella Valley Mtns. Conservancy
_____ Coastal Commission
_____ Colorado River Board
_____ Conservation, Department of
_____ Corrections, Department of
_____ Delta Protection Commission
_____ Education, Department of
_____ Energy Commission
_____ Fish & Game Region # _____
_____ Food & Agriculture, Department of
_____ Forestry and Fire Protection, Department of
_____ General Services, Department of
_____ Health Services, Department of
_____ Housing & Community Development
_____ Integrated Waste Management Board
_____ Native American Heritage Commission

_____ Office of Emergency Services
_____ Office of Historic Preservation
_____ Office of Public School Construction
_____ Parks & Recreation, Department of
_____ Pesticide Regulation, Department of
_____ Public Utilities Commission
_____ Regional WQCB # _____
_____ Resources Agency
_____ S.F. Bay Conservation & Development Comm.
_____ San Gabriel & Lower L.A. Rivers & Mtns. Conservancy
_____ San Joaquin River Conservancy
_____ Santa Monica Mtns. Conservancy
_____ State Lands Commission
_____ SWRCB: Clean Water Grants
_____ SWRCB: Water Quality
_____ SWRCB: Water Rights
_____ Tahoe Regional Planning Agency
_____ Toxic Substances Control, Department of
_____ Water Resources, Department of

_____ Other: _____
_____ Other: _____

Local Public Review Period (to be filled in by lead agency)

Starting Date _____ Ending Date _____

Lead Agency (Complete if applicable):

Consulting Firm: _____
Address: _____
City/State/Zip: _____
Contact: _____
Phone: _____

Applicant: _____
Address: _____
City/State/Zip: _____
Phone: _____

Signature of Lead Agency Representative: _____ **Date:** _____

Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.

Revised 2008

CEQA APPENDIX D: NOTICE OF DETERMINATION

Notice of Determination

Appendix D

To:

☐ Office of Planning and Research

For U.S. Mail: P.O. Box 3044, Sacramento, CA 95812-3044

Street Address: 1400 Tenth St., Sacramento, CA 95814

☐ County Clerk
County of: _____
Address: _____
_____

From:
Public Agency: _____
Address: _____
_____
Contact: _____
Phone: _____

Lead Agency (if different from above):
_____
Address: _____
_____
Contact: _____
Phone: _____

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): _____

Project Title: _____

Project Location (include county): _____

Project Description:

This is to advise that the _____ has approved the above described project on
☐ Lead Agency or ☐ Responsible Agency
_____ and has made the following determinations regarding the above described project:
(Date)

1. The project [☐ will ☐ will not] have a significant effect on the environment.
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [☐ were ☐ were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [☐ was ☐ was not] adopted for this project.
5. A statement of Overriding Considerations [☐ was ☐ was not] adopted for this project.
6. Findings [☐ were ☐ were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the Negative Declaration, is available to the General Public at:

Signature (Public Agency) _____ Title _____

Date _____ Date Received for filing at OPR _____

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

Revised 2005

CEQA APPENDIX E:
NOTICE OF EXEMPTION

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 212
Sacramento, CA 95812-3044

County Clerk
County of _____
_____
_____

From: (Public Agency) _____
_____
_____
(Address)

Project Title: _____

Project Location - Specific:

Project Location – City: _____ Project Location – County: _____

Description of Nature, Purpose and Beneficiaries of Project:

Name of Public Agency Approving Project: _____

Name of Person or Agency Carrying Out Project: _____

Exempt Status: **(check one)**

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☐ Categorical Exemption. State type and section number: _____
- ☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

Lead Agency
Contact Person: _____ Area Code/Telephone/Extension: _____

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: _____ Date: _____ Title: _____

☐ Signed by Lead Agency
☐ Signed by Applicant

Date received for filing at OPR: _____

Revised 2005

CEQA APPENDIX F: ENERGY CONSERVATION

I. Introduction

The goal of conserving energy implies the wise and efficient use of energy. The means of achieving this goal include:

(1) decreasing overall per capita energy consumption,

(2) decreasing reliance on fossil fuels such as coal, natural gas and oil, and

(3) increasing reliance on renewable energy sources.

In order to assure that energy implications are considered in project decisions, the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy (see Public Resources Code section 21100(b)(3)). Energy conservation implies that a project's cost effectiveness be reviewed not only in dollars, but also in terms of energy requirements. For many projects, cost effectiveness may be determined more by energy efficiency than by initial dollar costs. A lead agency may consider the extent to which an energy source serving the project has already undergone environmental review that adequately analyzed and mitigated the effects of energy production.

II. EIR Contents

Potentially significant energy implications of a project shall be considered in an EIR to the extent relevant and applicable to the project. The following list of energy impact possibilities and potential conservation measures is designed to assist in the preparation of an EIR. In many instances specific items may not apply or additional items may be needed. Where items listed below are applicable or relevant to the project, they should be considered in the EIR.

A. Project Description may include the following items:

1. Energy consuming equipment and processes which will be used during construction, operation and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project.
2. Total energy requirements of the project by fuel type and end use.
3. Energy conservation equipment and design features.
4. Identification of energy supplies that would serve the project.
5. Total estimated daily vehicle trips to be generated by the project and the additional energy consumed per trip by mode.

B. Environmental Setting may include existing energy supplies and energy use patterns in the region and locality.

C. Environmental Impacts may include:

1. The project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project including construction, operation, maintenance and/or removal. If appropriate, the energy intensiveness of materials maybe discussed.
2. The effects of the project on local and regional energy supplies and on requirements for additional capacity.
3. The effects of the project on peak and base period demands for electricity and other forms of energy.
4. The degree to which the project complies with existing energy standards.
5. The effects of the project on energy resources.

6. The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.

D. Mitigation Measures may include:

1. Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.
2. The potential of siting, orientation, and design to minimize energy consumption, including transportation energy, increase water conservation and reduce solid waste.
3. The potential for reducing peak energy demand.
4. Alternate fuels (particularly renewable ones) or energy systems.
5. Energy conservation which could result from recycling efforts.

E. Alternatives should be compared in terms of overall energy consumption and in terms of reducing wasteful, inefficient and unnecessary consumption of energy.

F. Unavoidable Adverse Effects may include wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated.

G. Irreversible Commitment of Resources may include a discussion of how the project preempts future energy development or future energy conservation.

H. Short-Term Gains versus Long-Term Impacts can be compared by calculating the project's energy costs over the project's lifetime.

I. Growth Inducing Effects may include the estimated energy consumption of growth induced by the project.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000-21176. Public Resources Code.

Revised 2009

CEQA APPENDIX G:
ENVIRONMENTAL CHECKLIST FORM

NOTE: The following is a sample form and may be tailored to satisfy individual agencies' needs and project circumstances. It may be used to meet the requirements for an initial study when the criteria set forth in CEQA Guidelines have been met. Substantial evidence of potential impacts that are not listed on this form must also be considered. The sample questions in this form are intended to encourage thoughtful assessment of impacts, and do not necessarily represent thresholds of significance.

1. Project title: _____
2. Lead agency name and address:
   _____
   _____
   _____
3. Contact person and phone number: _____
4. Project location: _____
5. Project sponsor's name and address:
   _____
   _____
   _____
6. General plan designation: _____ 7. Zoning: _____
8. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)
   _____
   _____
   _____
   _____
9. Surrounding land uses and setting: Briefly describe the project's surroundings:
   _____
   _____
   _____
   _____
10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)
    _____
    _____
    _____
    _____

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

☐ Aesthetics	☐ Agriculture and Forestry Resources	☐ Air Quality
☐ Biological Resources	☐ Cultural Resources	☐ Geology /Soils
☐ Greenhouse Gas Emissions	☐ Hazards & Hazardous Materials	☐ Hydrology / Water Quality
☐ Land Use / Planning	☐ Mineral Resources	☐ Noise
☐ Population / Housing	☐ Public Services	☐ Recreation
☐ Transportation/Traffic	☐ Utilities / Service Systems	☐ Mandatory Findings of Significance

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

_____ _____
Signature Date

_____ _____
Signature Date

EVALUATION OF ENVIRONMENTAL IMPACTS:

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from "Earlier Analyses," as described in (5) below, may be cross-referenced).

5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:

   a) Earlier Analysis Used. Identify and state where they are available for review.

   b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

   c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9) The explanation of each issue should identify:

a) the significance criteria or threshold, if any, used to evaluate each question; and

b) the mitigation measure identified, if any, to reduce the impact to less than significance

SAMPLE QUESTION

Issues:

	Potentially Significant Impact	**Less Than Significant with Mitigation Incorporated**	**Less Than Significant Impact**	**No Impact**
I. AESTHETICS. Would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☐
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☐
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☐	☐
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☐	☐
II. AGRICULTURE AND FORESTRY RESOURCES. In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:				

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☐
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☐
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	☐	☐	☐	☐
d) Result in the loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	☐
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	☐	☐	☐	☐
III. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☐
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☐	☐
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☐	☐
e) Create objectionable odors affecting a substantial number of people?	☐	☐	☐	☐
IV. BIOLOGICAL RESOURCES: Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	☐	☐	☐	☐
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☐
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
V. CULTURAL RESOURCES. Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	☐	☐	☐	☐
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	☐	☐	☐	☐
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☐	☐
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☐
VI. GEOLOGY AND SOILS. Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	☐	☐	☐	☐
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☐
ii) Strong seismic ground shaking?	☐	☐	☐	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☐
iv) Landslides?	☐	☐	☐	☐
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☐	☐
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☐	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	☐	☐	☐	☐
VII. GREENHOUSE GAS EMISSIONS. Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	☐	☐
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☐	☐	☐	☐
VIII. HAZARDS AND HAZARDOUS MATERIALS. Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☐
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☐
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☐
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☐
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	☐
IX. HYDROLOGY AND WATER QUALITY. Would the project:				
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☐
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☐
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	☐	☐	☐	☐
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☐	☐
f) Otherwise substantially degrade water quality?	☐	☐	☐	☐
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☐
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	☐	☐	☐	☐
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☐
j) Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☐
X. LAND USE AND PLANNING. Would the project:				
a) Physically divide an established community?	☐	☐	☐	☐
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☐	☐
XI. MINERAL RESOURCES. Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☐
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☐
XII. NOISE -- Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☐	☐
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☐	☐
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☐
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☐
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XIII. POPULATION AND HOUSING. Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☐
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☐
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☐
XIV. PUBLIC SERVICES.				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	☐	☐	☐	☐
Fire protection?	☐	☐	☐	☐
Police protection?	☐	☐	☐	☐
Schools?	☐	☐	☐	☐
Parks?	☐	☐	☐	☐
Other public facilities?	☐	☐	☐	☐
XV. RECREATION.				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	☐	☐
<u>XVI. TRANSPORTATION/TRAFFIC.</u> Would the project:				
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	☐	☐	☐	☐
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	☐	☐	☐	☐
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☐
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☐
e) Result in inadequate emergency access?	☐	☐	☐	☐
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XVII. UTILITIES AND SERVICE SYSTEMS. Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☐
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☐
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☐
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☐
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☐
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☐
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☐
XVIII. MANDATORY FINDINGS OF SIGNIFICANCE.				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number o restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☐	☐
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☐	☐

Note: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Section 65088.4, Gov. Code; Sections 21080(c), 21080.1, 21080.3, 21083, 21083.05, 21083.3, 21093, 21094, 21095, and 21151, Public Resources Code; *Sundstrom v. County of Mendocino,*(1988) 202 Cal.App.3d 296; *Leonoff v. Monterey Board of Supervisors,* (1990) 222 Cal.App.3d 1337; *Eureka Citizens for Responsible Govt. v. City of Eureka* (2007) 147 Cal.App.4th 357; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th at 1109; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656.

Revised 2009

CEQA APPENDIX H: ENVIRONMENTAL INFORMATION FORM

(To be Completed by Applicant)

Date Filed _____

General Information

1. Name and address of developer or project sponsor: _____
2. Address of project: _____

   Assessor's Block and Lot Number: _____
3. Name, address, and telephone number of person to be contacted concerning this project:

   _____

   _____
4. Indicate number of the permit application for the project to which this form pertains: _____
5. List and describe any other related permits and other public approvals required for this project, including those required by city, regional, state and federal agencies:

   _____
6. Existing zoning district:: _____
7. Proposed use of site (Project for which this form is filed): _____

   _____

Project Description

8. Site size.
9. Square footage.
10. Number of floors of construction.
11. Amount of off-street parking provided.
12. Attach plans.
13. Proposed scheduling.
14. Associated projects.
15. Anticipated incremental development.
16. If residential, include the number of units, schedule of unit sizes, range of sale prices or rents, and type of household size expected.
17. If commercial, indicate the type, whether neighborhood, city or regionally oriented, square footage of sales area, and loading facilities.
18. If industrial, indicate type, estimated employment per shift, and loading facilities.

19. If institutional, indicate the major function, estimated employment per shift, estimated occupancy, loading facilities, and community benefits to be derived from the project.
20. If the project involves a variance, conditional use or rezoning application, state this and indicate clearly why the application is required.

Are the following items applicable to the project or its effects? Discuss below all items checked yes (attach additional sheets as necessary).

		Yes	No
21.	Change in existing features of any bays, tidelands, beaches, or hills, or substantial alteration of ground contours.	☐	☐
22.	Change in scenic views or vistas from existing residential areas or public lands or roads.	☐	☐
23.	Change in pattern, scale or character of general area of project.	☐	☐
24.	Significant amounts of solid waste or litter.	☐	☐
25.	Change in dust, ash, smoke, fumes or odors in vicinity.	☐	☐
26.	Change in ocean, bay, lake, stream or ground water quality or quantity, or alteration of existing drainage patterns.	☐	☐
27.	Substantial change in existing noise or vibration levels in the vicinity.	☐	☐
28.	Site on filled land or on slope of 10 percent or more.	☐	☐
29.	Use of disposal of potentially hazardous materials, such as toxic substances, flammables or explosives.	☐	☐
30.	Substantial change in demand for municipal services (police, fire, water, sewage, etc.).	☐	☐
31.	Substantially increase fossil fuel consumption (electricity, oil, natural gas, etc.).	☐	☐
32.	Relationship to a larger project or series of projects.	☐	☐

Environmental Setting

33. Describe the project site as it exists before the project, including information on topography, soil stability, plants and animals, and any cultural, historical or scenic aspects. Describe any existing structures on the site, and the use of the structures. Attach photographs of the site. Snapshots or polaroid photos will be accepted.

34. Describe the surrounding properties, including information on plant~ and animals and any cultural, historical or scenic aspects. Indicate the type of land use (residential, commercial, etc.), intensity of land use (one-family, apartment houses, shops, department stores, etc.), and scale of development (height, frontage, set-back, rear yard, etc.). Attach photographs of the vicinity. Snapshots or polaroid photos will be accepted.

Certification

I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and in formation presented are true and correct to the best of my knowledge and belief.

Date _____ Signature _____

For _____

CEQA APPENDIX I:
NOTICE OF PREPARATION

To: _____ From: _____

_____ _____
(Address) (Address)

_____ _____

Subject: **Notice of Preparation of a Draft Environmental Impact Report**

_____ will be the Lead Agency and will prepare an environmental impact report for the project identified below. We need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency will need to use the EIR prepared by our agency when considering your permit or other approval for the project.

The project description, location, and the potential environmental effects are contained in the attached materials. A copy of the Initial Study (☐ is ☐ is not) attached.

Due to the time limits mandated by State law, your response must be sent at the earliest possible date but not later than 30 days after receipt of this notice.

Please send your response to _____ at the address shown above. We will need the name for a contact person in your **agency**.

Project Title: _____

Project Applicant, if any: _____

Date _____ Signature _____

Title _____

Telephone _____

Reference: California Code of Regulations, Title 14, (CEQA Guidelines) Sections 15082(a), 15103, 15375.

CEQA APPENDIX J: EXAMPLES OF TIERING EIRS

FIRST TIER EIR (15152)

- project encompasses separate but related projects such as general plan, zoning, development
- later tiers move from general to specific analysis of projects

Later Project EIR

- later project is consistent with general plan or zoning
- initial study must examine significant effects not covered in prior EIR
- later EIR must state lead agency is using tiering concept and must comply with section 15152

STAGED EIR (15167)

- one large project will require a number of discretionary approvals from govt. agencies and one of those approvals will occur more than two years before construction commences

Supplement to the Staged EIR

- supplements to the staged EIR are prepared for later government agency approvals on the same overall project if information available at the time of that later approval would permit consideration of additional environmental impacts, mitigation measures or reasonable alternatives

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PROGRAM EIR (15168)

- series of actions or activities that can be characterized as one large project and are related either:
- geographically
- as logical parts of a chain of activities
- in connection with rules, regulations, plans or other general criteria governing a continuing program
- as individual activities carried out under common authority (statutory or regulatory) and having similar environmental effects which can be mitigated in similar ways

Subsequent Project EIR	• only if subsequent activity has effects not examined in the previously certified program EIR will additional environmental documentation be required (if subsequent activity has no new effects, that activity is covered by the program EIR)
MASTER EIR (15175)	• alternative to project, staged, or program EIR • can be used for: - general plan (or gen. plan element, amendment, or update) - redevelopment plan projects (public or private) - project consisting of phases of smaller individual projects - other activities described in 15175 • after five years from initial certification, adopting authority must review the Master EIR and prepare subsequent or supplemental EIR if substantial changes have occurred with respect to circumstances under which the original Master EIR was adopted • no new EIR is required for subsequent projects within the scope of the Master EIR which cause no additional significant effect
Focused EIR (15177)	• a subsequent, Focused EIR is required only where: - substantial new/additional information shows adverse environmental effects not examined in Master EIR or more significant than described in EIR, or - substantial new/additional information shows mitigation measures previously determined to be infeasible are now feasible and will avoid/reduce the significant effects to a level of insignificance

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SPECIAL SITUATIONS / EIRs

Multiple-family residential development / residential and commercial or retail mixed-use development (PRC 21158.5 and Guideline §15179.5)

- project is multiple-family residential development up to 100 units or is a residential and commercial or retail mixed-use development of not more than 100,000 square feet
- if project complies with procedures in section 21158.5, only a focused EIR need be prepared, notwithstanding the fact that the project wasn't identified in the Master EIR

Redevelopment Project (15180)

- all public and private activities or undertakings in furtherance of a redevelopment plan (public or private) constitute a single project
- the redevelopment plan EIR is treated as a program EIR

- no subsequent EIR is required for individual components of the redevelopment plan unless substantial changes or substantial new information triggers a subsequent EIR or supplement to an EIR pursuant to (sections 15162 or 15163)

Housing/neighborhood commercial facilities (15181)

- a project involving construction of housing or neighborhood commercial facilities in an urbanized area
- a prior EIR for a specific plan, local coastal program, or port master plan may be used as the EIR for such a project (no new EIR need be prepared) provided section 15181 procedures are complied with

Projects Consistent with Community Plan, General Plan, or Zoning (15183)

- a project which is consistent with a community plan adopted as part of a general plan or zoning ordinance or a general plan of a local agency <u>and</u> where there was an EIR certified for the zoning action or master plan
- the EIR for the residential project need only examine certain significant environmental effects, as outlined in section 15183

Regulations on Pollution Control Equipment (PRC section 21159)

- section 21159 requires environmental analysis of reasonably foreseeable methods of compliance at the time of adoption of rule or regulation requiring the installation of pollution control equipment
- an EIR prepared at the time of adoption of the rule or regulation is deemed to satisfy the requirement of section 21159

Installation of Pollution Control Equipment (PRC section 21159.1)

- a focused EIR is permitted where project 1) consists solely of installation of pollution control equipment; 2) is required by rule or regulation adopted by the State Air Resources Board, an air pollution control district or air quality management district, the State Water Resources Control Board, a California regional water quality control board, the Dept. of Toxic Substances Control, or the California Integrated Waste Management Board; and 3) meets the procedural requirements outlined in section 21159.1

CEQA APPENDIX K: CRITERIA FOR SHORTENED CLEARINGHOUSE REVIEW

Under exceptional circumstances, and when requested in writing by the lead agency, the State Clearinghouse in the Office of Planning and Research (OPR) may shorten the usual review periods for proposed negative declarations, mitigated negative declarations and draft EIRs submitted to the Clearinghouse. A request must be made by the decision-making body of the lead agency, or by a properly authorized representative of the decision-making body.

A shortened review period may be granted when any of the following circumstances exist:

(1) The lead agency is operating under an extension of the one-year period for completion of an EIR and would not otherwise be able to complete the EIR within the extended period.

(2) The public project applicant is under severe time constraints with regard to obtaining financing or exercising options which cannot be met without shortening the review period.

(3) The document is a supplement to a draft EIR or proposed negative declaration or mitigated negative declaration previously submitted to the State Clearinghouse.

(4) The health and safety of the community would be at risk unless the project is approved expeditiously.

(5) The document is a revised draft EIR, or proposed negative declaration or mitigated negative declaration, where changes in the document are primarily the result of comments from agencies and the public.

Shortened review cannot be provided to a draft EIR or proposed negative declaration or mitigated negative declaration which has already begun the usual review process. Prior to requesting shortened review, the lead agency should have already issued a notice of preparation and received comments from applicable State agencies, in the case of an EIR, or consulted with applicable State agencies, in the case of a proposed negative declaration or mitigated negative declaration.

No shortened review period shall be granted unless the lead agency has contacted and obtained prior approval for a shortened review from the applicable state responsible and trustee agencies. No shortened review shall be granted for any project which is of statewide, regional, or areawide significance, as defined in Section 15206 of the guidelines.

CEQA APPENDIX L:
NOTICE OF COMPLETION OF DRAFT EIR

Project Title

Project Location – Specific

Project Location – City Project Location – County

Description of Nature, Purpose, and Beneficiaries of Project

Lead Agency Division

Address Where Copy of EIR is Available

Review Period

Contact Person Area Code Phone Extension

Authority cited: Section 21083, Public Resources Code. Reference: Sections 21092, 21152, and 21153, Public Resources Code.
Revised 2005

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Note: The electronic version of the CEQA Statute and Guidelines can be searched for keywords at www:califaep.org

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